

# TRUST ISSUES



RON POL ponders what's blocking effective policy debate about New Zealand's foreign trusts regime.

Last month, thousands of articles were published worldwide about the so-called Panama Papers. They stirred up heated argument about New Zealand's role, but scant policy debate. This is my shot at an objective, non-partisan view of how the political parties have been and could be responding.

## LABOUR: MACKEREL SOUGHT

By all means go hard on the Prime Minister, but spare us unsubstantiated reports of sycophants whispering breathlessly in your ear.

Here's a secret. Not everything's about John Key. His lawyer, who manages a regular account to pay the fees of an onshore trust, moved to a firm establishing foreign trusts and bandied his name about.

Someone should have asked, "So what"? Maybe get some advisers who don't share your world view that all evil emanates from one source. And give one a big wet mackerel to slap you when his name is mentioned, because baseless attacks on Key weaken your arm as they strengthen his.

Free from distraction, you might apply your energies to ways in which the current regime might actually have been misused.

Those who have reportedly used New Zealand foreign trusts or shell companies include the Maltese Prime Minister's chief of staff and Energy Minister, an accused Brazilian money launderer, a Spaniard previously charged with fraud, Bram van der Kolk – facing extradition with Kim Dotcom – a prominent Mexican businessman

and the Calabrian mafia. Kiwi corporate vehicles have been implicated in energy deals in Haiti and Malta and construction contracts in Mexico. "Industrial scale" bribery allegations in Iran, Iraq and Libya were linked to an Auckland company whose sole New Zealand director is a foreign trusts lawyer claiming confidentiality and lack of knowledge. A Namibian receptionist with offshore companies linked to arms dealers is co-director with a Seychellois woman associated with hundreds of Kiwi firms and a businessman with shell companies linked to arms deals, drug lords and Russian tax fraud. A Dutch law firm specialising in complex offshore strategies is so well-known for inserting Kiwi foreign

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trusts into webs of opaque ownership structures it may have done more than Mossack Fonseca.

If you reckon it's "not a good look" for our foreign trusts to be tainted or that their design allows misuse with impunity, you might do something about it. No, no, no, apply wet mackerel. Unless he arranged arms deals, it's probably *not* about Key. The word you're looking for is "policy". Develop some. You know, ones that might be effective and good for New Zealand.

## GREENS: ELEPHANT FIRST

Good for you. You've tried this policy-debate lark. You asked questions in Parliament about the stalled extension of anti-money laundering controls, albeit fobbed off with vacuous responses obvious from the outset.

Hidden lobbying you uncovered has disturbing elements, but probably not the bit about Key. You could brush up on "the secret" too and pop down to the local fish shop with Messrs Little and Robertson.

But it seems you've got a bigger problem. Long ignored, the elephant in the room has grown to monumental proportions. Half green, the other dark crimson. Whatever the issue, even sharp political discourse means naught when the commentariat tars you with a self-administered brush that pigeonholes even sensible debate as socialist ravings.

Face your demons and pick a colour. Any colour, it's your call. Then we'll know who you really are. If you choose Red, ditch the party label misnomer and hitch a ride in Labour's saddlebags. They'll drop you when not required, but you'll have influence when things are tight.

If you choose Green, you might select the hue of your partner based on your principles, not theirs.

Then if you reckon New Zealand's "one-size-fits-all" model of foreign trusts – equally attractive to legitimate businesses as to tax evaders, despots and drug dealers – is a bit iffy, come up with an alternative. Blue or Red might match here.

If you envisage "clean" foreign trusts



boosting our competitive and reputational advantage, you might expand the concept to recover tax evasion and other criminal proceeds. A Blue-Green deal could divert the windfall into areas boosting the environment and economy.

If National, in effect, keeps insisting that the world's criminals have the same rights as legitimate businesses to shelter in our own special brand of secrecy haven, Red-Green works too. Add more far-reaching policy change, say to cut off tax avoidance as well as reclaiming tax evasion and crime proceeds. And if the figures bandied about are even vaguely right, you could cut taxes for all Kiwis and expand social and environmental programmes.

In either case, the key is policy debate and policy effectiveness, not Key.

#### **NZ FIRST: GOAL CLARITY**

Unsubstantiated rumour. Conspiracy theories. Theatrical ejections from the House. Shades of Winebox. Classic Winston Peters, revisited.

If the goal is political power, thundering calls for sweeping inquiries and playing all against each other might succeed, again.

But if the goal is to make a difference, do we need a long, expensive inquiry to spell out the obvious? We already know how foreign trusts work and our reputation is affected. We know it suits anyone seeking secrecy, whether legitimate businesses or corrupt officials plundering nations.

Is that okay? If not, can we fix it?

#### **MAORI PARTY: PRINCIPLES WELCOME**

Sorry if I missed it, but your contribution seems conspicuous by its absence. Even in the face of political expediency, leaders past and present have stood for principles. Does our foreign trusts regime sit well with you?

Even if you just look at the tax angle, thousands of Kiwi businesses and struggling wage earners pay full tax rates. When the wealthy and corrupt evade taxes and multinationals earning hundreds of millions pay only a fraction of normal rates, who shoulders the burden?

Is that okay with you? Australia just handed a huge tax bill to a company using offshore companies to pay just \$248 on revenues of \$1.7 billion, and created a

#### **Ramon Fonseca, one of the founders of Panama's Mossack Fonseca law firm.**

new penalty-rate diverted profit tax and taskforce to prevent and claw back multinational tax avoidance. If there's to be policy debate, your voice – one of reason, principle and passion – would be welcome.

#### **UNITED FUTURE: WAKE-UP CALL**

Also subdued on the issue until late in the piece. But a former Revenue Minister might add value, particularly with recent experience exploring evidence-based policy options. We appreciate you're busy on drug-control reform in the context of vociferous opposition bearing the weight of four decades of entrenched views. By comparison, foreign trusts should be a walk in the park.

It may have concerned you to hear senior ministers say it's not our job to shore up other countries' tax bases. But you know that's exactly the role of reputable countries and the rationale of information-sharing. You might remember what the Government told Transpower about taking a fee for helping

a US bank cut its tax bill, eroding the US tax base and damaging New Zealand's reputation. We can't expect help from others sheltering those ripping off our tax base if we give them two fingers. Likewise, extolling a corruption-free reputation, while selling corporate vehicles enabling corruption. We can't have it both ways.

It is, you said, "a sobering wake-up call". Our system is "clear[ly] ... being used in a way ... never intended", and our own laws "are contributing to this situation". Issue identification, tick. Next, policy, legislation, done.

**ACT: ENERGISER BUNNY**

David Seymour has made interesting observations in various areas. Some may lead somewhere, others not. Only time will tell, but he has plenty of energy. Just the thing for Act to deal with its own elephant in the room. A party in search of a mature guiding principle to separate it from its troubled teenage years. This issue probably isn't it. But I have no idea what Act now stands for so might be wrong, and you seem keen on evidence-informed debate. If so, bring it on.

**NATIONAL: POLITICS WITHOUT POLICY**

For political observers, a masterclass. "On message", plugged in, unwavering. Then a flip, engineered in a Monday morning love-in, to face the next week equally resolute. Nothing remained standing in its path. Journalists moved on to other questions. Opponents armed with twigs to fight a dragon met an obvious fate, as the PM strode off unharmed, stage right, without a glance at overlooked swords they might have used.

A mixed bag of truths and half-truths transformed into a dazzling array of juggling balls, almost indistinguishable as to be seamless.

Information sharing? They obviously haven't bought the mackerel yet if they missed the gaping hole in that one. Perfectly safe then to fashion thin air into a cudgel and beat opponents about the head with it some more. Nice work.

And tax haven? Of course not, how dare you. To even suggest such a thing is to bring the very disrepute you claim. Clever. And of course, true, to a point. New Zealand is no tax haven, for Kiwis. Only foreigners who structure their affairs just right regard us as the perfect tax-free sanctuary.



Left to right, Berlin protesters hold fake money, demanding greater transparency in tax law; about 50,000 people in London protest austerity and tax evasion; activists in Brussels act as clients of an offshore company.

For others, keeping away from prying eyes is what matters. New Zealand's secrecy provisions are equally valuable for legitimate businesses as for oligarchs fraudulently divorce-proofing assets and an indeterminate number of corrupt politicians, drug cartels and human traffickers.

Indeterminate because we don't ask, don't know, can't share and, by implication, don't care.

**The design of our foreign trusts regime doesn't prevent crime. It enables and facilitates crime.**

After all, money is money. But, actually, it's not. Legitimate foreign investment helps the economy. Stashing the cartels' loot into real estate only helps expand criminal empires, with its attendant economic and personal misery.

And mostly the cash is never here anyway. Offshore trusts set up by Dutch lawyers for unknown clients might own shares in a BVI company, which controls others in Belize, with links to a Delaware LLC with Manhattan apartments bought with profits of organised crime. The journalist in charge of the Panama Papers regards New Zealand as "a nice front for criminals" and all we get is chump change.

A ministerial response to parliamentary questions proclaimed our anti-money laundering regime is "aimed at preventing crime". True enough, sort of. Trouble is, the aim is imperfect and there are so many gaps as to fill a PhD thesis. It's not just that we don't meet international standards in some areas. In other ways

those standards and our laws aren't as effective as they might be in actually preventing crime. This area is infamous. The design of our foreign trusts regime doesn't prevent crime. It enables and facilitates crime.

As Peter Dunne rued, the system was probably created with honest intent, and most service providers are scrupulous. But if we wanted to create a vehicle for drug dealers and organised crime groups to protect and expand their operations, it would be almost identical to the one we have.

I can't fathom why the status quo is being defended so staunchly, seemingly without pausing to reflect what it actually stands for. Nor apparently considering reputational damage. In the Security Council and United Nations General Assembly, New Zealand's reputation as honest broker is as invaluable as it is easily lost when expediency trumps principle. But, it's your call.

Likewise, for policymakers elsewhere. Australia took a different approach. It didn't bother much arguing semantics about tax havens and launched investigations into 800 Australians' tax affairs. Last week, Australia simply acknowledged "revelations that complex corporate structuring arrangements are being abused by criminals to perpetrate money laundering and other serious organised crimes". It's now developing measures "to combat the abuse of corporations and trusts".

Back here, there have been calls for action that the industry claims will close it down – from doing just that to taxing offshore trusts as other countries do and creating public registers. Each has countervailing arguments. Some of your apparent



inaction might therefore be sensible; knee-jerk reactions seldom result in policy effectiveness.

But actual policy debate seems scant. Other options are available, including at least one that could conceivably prevent criminal misuse and deliver competitive advantage to a “clean” trusts industry. Recalibrating other policy settings might also recover significant criminal proceeds, with international co-operation boosting our reputation and government coffers.

Yet even as other countries act, these policy choices appear not even to have been considered. Tuesday’s question time might offer a clue. With ineptly crafted questions almost completely missing the issues, effortlessly batting them away means there’s hardly need even to reflect.

Either way, selecting good policies requires frank assessment of the status

quo, examining policy options and choosing the most effective.

You know that, of course. So, really, this is just an invitation to consider cracking on with something a bit more positive. Watching those other guys floundering might be fun, and announcing a “review” of the patently obvious gives the appearance of action, but frankly neither advances effective policy development or better outcomes.

#### SUBSTANCE LOOMING?

“I-said-he-said” cracks are appearing in the narrative of Key, his lawyer Ken Whitney and former Revenue Minister Todd McClay, and Inland Revenue’s trusts review and shelving timeline. If the PM comes unstuck, it may just be the wall of noise unravelling around him rather than any substance in anti-Key rhetoric. For the

Opposition, focusing on the issues might have achieved better results weeks ago.

Likewise, resolving to address obvious problems might have averted Key’s own “political-smoke-and-mirrors-bereft-of-substance” sideshow, and restored New Zealand’s reputation. Although Mossack Fonseca is not even the claimed tip of the iceberg, if the International Consortium of Investigative Journalists releases enough of the 60,000 New Zealand references in next week’s data dump to reveal more, he may regret not doing so.

In the meantime, the issues sit forlorn, completely unaddressed, a month later. ■

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## Cleaning up foreign trusts

Creating a “clean” foreign trust regime and competitive advantage wouldn’t mean throwing out the existing model, just changing the bit that turns a blind eye to tax evasion and other serious crime. If policymakers want to retain an offshore trusts industry, they could retain the good purposes and shut out the bad uses and reputational damage associated with the present model. One idea is a beneficial ownership and activities register accessible by tax and enforcement authorities:

- Confidentiality reassures the safety of legitimate commercial secrets.

Multinationals developing secret joint ventures, for example, can operate in the security of Kiwi offshore trusts.

- Businesses may be cautious at first, but New Zealand’s reputation would now be positive; a competitive advantage attracting those wary of being associated with criminality.
- Commerce would be easier for those choosing a “clean” model. Banks would be more assured of probity, without the red flags accompanying havens also sheltering organised crime.
- Tax evaders and other criminals would dislike a “clean” offshore trusts

jurisdiction with “real-time” enforcement oversight.

- The world’s criminals may congregate in the remaining dirty pools that continue to make no distinction between legal activities and their unsavoury business.

A new Kiwi model may be attractive for businesses and individuals requiring a safe place for legitimate business, safeguarding and enhancing our clean reputation. The international community might apply sanctions to remaining dirty havens. We can help eliminate them by clean competition.