



Tax Policy

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News and information programme, including:

- proposed changes to the laws that Inland Revenue is responsible for
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Foreign trust disclosure rules

A special report from Policy and Strategy, Inland Revenue. March 2017

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This special report provides early information on the increased disclosure requirements for foreign trusts with New Zealand-resident trustees contained in the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017. These include requirements for the trust to register with Inland Revenue, file annual disclosure returns, and pay registration and filing fees. In addition, the register of foreign trusts would be shared with certain New Zealand government agencies.

The resident trustee of the foreign trust would need to comply with the registration and filing obligations in order to qualify for the exemption from tax on foreign-sourced income.

The amendments contained in the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act require existing trusts to apply for registration by 30 June 2017. Foreign trusts that are formed after the enactment of these amendments (21 February 2017) have 30 days to apply for registration.

Background

New Zealand taxes trusts on the basis of the tax residence of the settlor. Accordingly there is an exemption in section CW 54 of the Income Tax Act 2007 for foreign-sourced amounts derived by resident trustees. The eligibility for the exemption is set out in section HC 26.

The changes follow the Government's April 2016 Inquiry into Foreign Trust Disclosure Rules. The Inquiry was set up to examine and make recommendations regarding disclosure rules and other related matters to ensure that New Zealand's reputation is maintained. The Inquiry recommended a formal registration process for foreign trusts and increased disclosures of information. The Inquiry also considered that the Department of Internal Affairs and New Zealand Police should be able to access the information.

These changes are important to protect New Zealand's reputation as having best practice in contributing to global exchange of information.

These disclosure requirements are imposed on a New Zealand resident trustee of the foreign trust.

Key features

Registration of a foreign trust

Resident foreign trustees will be required to register foreign trusts with Inland Revenue under new section 59B(2). A contact trustee is responsible for the communication with the Commissioner of Inland Revenue and must provide the required information about the foreign trust. In many cases, it is likely that there will only be one resident foreign trustee, who will therefore also be the contact trustee. If a foreign trust has more than one resident foreign trustee, each of them is responsible for the performance of the trustee obligations, but they will need to decide who will be the contact trustee and will communicate the information to Inland Revenue. These include registering the trust, disclosing information required as part of registration, filing annual disclosure returns and paying fees.

If the contact trustee expects to stop being a resident foreign trustee of a trust, for example if they will no longer be a New Zealand resident, they must inform the Commissioner of the date they expect this to happen and the details of any replacement contact trustee.

An amendment is also made to the definition of a foreign trust in section HC 11 to ensure a foreign trust is defined at a point in time rather than when a distribution is made. This ensures that all foreign trusts with a New Zealand-resident trustee must comply with the disclosure rules, regardless of whether a distribution has been made.

Registration for existing foreign trusts

New section 59B replaces the previous section 59B which covered the disclosure of information for foreign trusts. The previous section 59B included requirements to disclose certain information as part of an initial disclosure to Inland Revenue and subsequently to provide any changes to these details within 30 days.

The previous foreign trust disclosure process is being replaced by a more extensive disclosure regime with a formalised registration process. Following enactment (21 February 2017), the previous disclosure rules no longer apply.

Resident foreign trustees of existing foreign trusts will have until 30 June 2017 to apply for registration of the foreign trust and provide the relevant information. This registration will include providing some information that was already included as part of the trust's initial disclosure, alongside the more extensive requirements which have been introduced.

Registration details

Replacement section 59B stipulates what information must be provided with the application to register the trust with Inland Revenue. If the contact trustee does not provide any of the information this may affect the eligibility for the exemption on tax for foreign-sourced income derived by resident trustees.

Annual disclosure returns

Resident trustees of a foreign trust will be required to file annual returns, including the trust's financial statements, and details of settlements and distributions made over the year. The due date for filing the return is six months after the foreign trust's balance date, or 30 September if the trust does not have a balance date (being six months after the end of New Zealand's tax year).