

March 2017

A special report from
Policy and Strategy, Inland Revenue

Foreign trust disclosure rules

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).

The contact trustee must also provide any updates to the information provided at registration within 30 days after becoming aware of the alteration.

Registration and annual filing fee

New section 59E prescribes a registration fee of \$270 and an annual filing fee of \$50. This section also includes a regulation-making power which will allow these fees to be amended by Order in Council. This section also allows natural persons who are not in the business of providing trustee services to be exempt from the fees.

Concessions for natural persons not in the business of providing trustee services

The previous disclosure requirements introduced in 2006 included a grace period of two years for new migrants who are not in the business of providing trustee services. In recognition of the increased disclosure obligations on resident foreign trustees, this grace period has been extended to four years. The eligibility for the grace period has also been extended more generally to situations where all trustees are natural persons not in the business of providing trustee services. This gives the resident foreign trustee more time to understand their obligations and comply with the disclosure rules.

This change, along with several other concessions, has been introduced to reduce compliance costs for foreign trusts when all trustees of the foreign trust are natural persons not in the business of providing trustee services. These concessions recognise that not all foreign trusts are intended to be established as such and some people may become resident foreign trustees of foreign trusts due to changes in circumstances (for example, such as a trustee migrating to New Zealand or acting as an executor of a trust).

For consistency, these concessions should all apply in the same circumstances across the board, so that non-professional trustees can readily ascertain what concessions are available to them.

These concessions include increased time to comply with registration requirements, limited information required about settlements, and a waiver of registration and annual return fees. The concessions available to non-professional trustees are discussed in further detail in later sections of this special report.

Summary of registration requirements and concessions

| | At least one trustee is not a natural person or is in the business of providing trustee services | All trustees are natural persons not in the business of providing trustee services |
|---|---|---|
| Time limits for application for registration | <p>If the foreign trust exists on the date of Royal assent (and the resident foreign trustee is already appointed as a trustee), the resident foreign trustee must apply to register the trust by 30 June 2017.</p> <p>If the foreign trust is established after the date of Royal assent or a resident foreign trustee is appointed after the enactment of the legislation, the resident foreign trustee must apply to register the trust within 30 days of becoming the resident foreign trustee.</p> | <p>The trustee must apply to register the trust within four years and 30 days from the date that the trustee became a resident foreign trustee (that is, when the trustee was appointed or became a New Zealand resident).</p> <p>If the resident foreign trustee has held that role for more than four years and 30 days before enactment of the legislation, the deadline is 30 June 2017.</p> <p>If there are multiple resident foreign trustees, the grace period begins on the earliest date that any of the trustees became a resident foreign trustee.</p> |

| | At least one trustee is not a natural person or is in the business of providing trustee services | All trustees are natural persons not in the business of providing trustee services |
|---|--|---|
| Information required on application for registration | Copy of the trust deed. | Copy of the trust deed. |
| | Identifying particulars and contact details for settlors, trustees and beneficiaries. | Identifying particulars and contact details for settlors, trustees and beneficiaries. |
| | Signed declaration that relevant persons are aware of their legal obligations to provide information and will do so. | Signed declaration that relevant persons are aware of their legal obligations to provide information and will do so. |
| | Information about settlements made from date of formation until the date of application. | For trusts first required to register on date of Royal assent, information about settlements dating back to 30 June 2013 (or formation, if later). For trusts first required to register after date of Royal assent, information about settlements dating back four years (or formation, if later). See the section “Information required on registration” and the subsection “Historical settlements”. |
| Registration application fee | \$270 including GST. | Exempt – see “Fees” section. |
| Subsequent changes to information | Within 30 days. | Within 30 days. |
| Annual disclosure return | Within six months of balance date or end of the tax year with a copy of financial statements, and details about settlements and distributions made during the return year. | Within six months of balance date or end of tax year with a copy of the financial statements, and details about settlements and distributions made during the return year. |
| Annual return filing fee | \$50 including GST per return year. | Exempt – see “Fees” section. |

Eligibility for tax exemption

Foreign-sourced income derived by a New Zealand-resident trustee is exempt income under section CW 54 of the Income Tax Act 2007 if certain criteria are met. The criteria are set out in section HC 26. The amendments to section HC 26 ensure that the foreign trust must comply with the increased disclosure obligations in order to be eligible for this tax exemption.

Information sharing with other agencies

An exception to the secrecy provisions will allow the information contained in the foreign trust register to be shared with the Department of Internal Affairs and New Zealand Police.

The Finance and Expenditure committee also recommended that Inland Revenue should be able to share information with the Overseas Investment Office. This will take the form of an Approved Information Sharing Agreement between Inland Revenue and the Overseas Investment Office.

Consequential amendments

Certain definitions and record-keeping requirements have been repealed due to the extended disclosure requirements.

Application dates

The amendments came into effect on the date of Royal assent, being 21 February 2017.

For foreign trusts in existence at the date of Royal assent, the resident foreign trustee must apply for registration of the trust by 30 June 2017.

Detailed analysis

Tax exemption for foreign-sourced amounts: resident trustees

New Zealand taxes trusts on a settlor basis. One result of this is an exemption for foreign-sourced amounts derived by trustees resident in New Zealand if the trust is classified as a foreign trust.

This tax exemption was available to all New Zealand-resident trustees before the enactment of the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017. However, if the trustee was convicted of a knowledge offence and was not a qualifying resident foreign trustee, they did not qualify for the exemption.

The amendments to section HC 26 tighten the criteria for the tax exemption. These amendments require the resident foreign trustee to comply with the disclosure obligations for the income year in which the income is derived.

Trust deed required for exemption

The Commissioner may register a foreign trust regardless of whether it has a trust deed. However, the tax exemption on foreign-sourced amounts will only be available to resident foreign trustees if the trust has a trust deed, even if all other registration and ongoing requirements are met.

The rationale behind requiring a trust deed in order to qualify for the exemption is to counter possible circumvention of the disclosure obligations by using documentation other than a trust deed or verbal agreements to avoid disclosing information to Inland Revenue. The trust deed is a vital piece of information and it is important for it to be provided to Inland Revenue and other enforcement agencies.

Eligibility for exemption

The eligibility for an exemption on foreign-sourced income of the trust is assessed each year. A foreign trust that is not registered on time will lose its exemption for that year.

If the foreign trust is later registered, it will be able to get the exemption for the years for which it has met its disclosure obligations.

The trust must be registered at the time the income is derived to qualify for the tax exemption in section CW 54. In addition, subsections HC 26 1(c) and (d) provide rules around when the trust must be registered to qualify for the exemption.

Application made within time limits under section 59C

If a resident foreign trustee applies for registration within the time limit given by new section 59C (the “application period”), and registration is completed by the end of the income year after the application period (the “post-deadline year”) then for any subsequent years they will qualify for the exemption as long as the trust remains registered and the trustee meets their obligations.

Resident foreign trustees must comply with all their obligations under sections 22, 59B, 59C and 59D of the Tax Administration Act 1994 for the income year in order for the trust to qualify for an exemption on foreign-sourced trustee income.

Example

XYZ Trust is formed on 1 November 2016, and Frank, a New Zealand resident, is appointed as a trustee. Frank has until 30 June 2017 to apply to the Commissioner for registration of XYZ (see the “Time limits for registration” section for more details).

Frank applies for registration within the time specified in section 59C, and the registration process for XYZ Trust is completed one month after the end of the application period. The trust is fully registered with Inland Revenue on 1 August 2017. Any foreign-sourced trustee income will be eligible for an exemption from New Zealand tax under section CW 54 if all the conditions specified in section HC 26(1)(c) are met.

For the XYZ Trust’s foreign-sourced trustee income to qualify for the exemption, the following conditions must be met.

- (a) XYZ Trust must have a trust deed.
- (b) XYZ Trust’s registration must be current when the foreign-sourced income is derived.
- (c) The resident foreign trustee (Frank) must also comply with all the requirements under sections 22, 59B, 59C and 59D as they arise during the income year.

For example, if XYZ adds a beneficiary on 5 September 2017, Frank will need to provide Inland Revenue with the required information on the additional beneficiary within 30 days, under section 59C.

Application made outside time limits under section 59C

If the resident foreign trustee does not apply for registration within the application period, the trust can qualify for the tax exemption in future if it is registered from the beginning of the income year when the foreign-sourced income is derived and the trustee fulfils their obligations for that income year. As is the case for trusts who apply for registration within the timeframe given under section 59C, the trust must have a trust deed.

Example

Tiny Tunes Trust was formed on 1 May 2016, at which time they appointed a New Zealand-resident trustee, Jazz Ltd. Following Royal assent of the new legislation, Jazz Ltd has until 30 June 2017 to apply for registration of Tiny Tunes Trust.

However, Jazz Ltd applies for registration of Tiny Tunes Trust on 1 September 2017. For the income year beginning 1 April 2017, Tiny Tunes Trust will not be eligible under section HC 26 for the tax exemption on foreign-sourced trustee income.

If Jazz Ltd applies and completes the registration of Tiny Tunes Trust by 31 April 2018, they will be eligible for the income exemption on foreign-sourced trustee income if the conditions set in section HC 26(1)(d) are met.

Ongoing compliance with obligations

To qualify for the exemption the trust must meet the registration requirements. In addition to these, the resident foreign trustee must comply with the requirements under sections 22, 59B, 59C and 59D as they arise in the income year.

Section 22 contains record-keeping requirements. Section 59B sets out the obligations for registering a trust and what information must be provided. (See the section “Information required on registration” for more details).

Section 59C specifies the timeframes for registering the trust and updating the details provided at registration.

Obligations in relation to annual returns are contained in section 59D. Annual return due dates are discussed in the section “Annual disclosure returns and financial statements”.

Non-compliance when reasonable efforts made

Amended section HC 26 provides discretion for the Commissioner of Inland Revenue to allow the exemption to still apply if the trustee has made an error in registration requirements. This is provided for by new subsection (1B).

If a resident foreign trustee makes an error or does not comply with the requirements under sections 22, 59B, 59C or 59D, the exemption for foreign-sourced trustee income may still apply if the Commissioner is satisfied that the trustee made reasonable efforts to comply with the requirements and remedied the error within a reasonable timeframe.

Repeal of qualifying resident trustee

The previous tax exemption criteria in section HC 26 recognised “qualifying resident trustees” and provided that the exemption would still be available even if a knowledge offence were committed, as long as one or more resident foreign trustees were qualifying resident trustees. A “qualifying resident trustee” was defined as a member of an approved organisation, or for a trustee that is not a natural person, a director or person with significant influence over the entity would have to be a member of an approved organisation.

The concept of a qualifying resident trustee, and the lesser sanctions that applied in these cases have been repealed.

Requirement to register foreign trust

Amended section 59B(2) provides that resident foreign trustees of a foreign trust must apply to the Commissioner for registration of the foreign trust.

Section 59B(1) provides that the Commissioner may approve the application for registration of a foreign trust, if the foreign trust has a resident foreign trustee and the application fee has been paid. However, other registration requirements must also be met before approval. These are set out in sections 59B(3) and (4).

To be eligible for the foreign-sourced income exemption under section HC 26 of the Income Tax Act 2007, a foreign trust must be registered with the Commissioner of Inland Revenue. This is discussed in the section above “Tax exemption for foreign-sourced amounts: resident trustees”. “Time limits for registration” below provides further detail on the timeframes for registration.

Definition of a foreign trust

An amendment has been made to section HC 11 in the Income Tax Act which classifies when a trust is a foreign trust. This section has been amended to apply at a moment in time rather than at in relation to a distribution. This ensures that it is not necessary for a foreign trust to have made a distribution before the disclosure obligations apply.

It is important to note that there are existing disclosure obligations regarding foreign trusts established in New Zealand. The previous definition of a foreign trust in relation to a distribution does not appear to have caused any significant uncertainty in practice. However, given the more extensive disclosure obligations, and higher compliance requirements for the tax exemption on foreign-sourced trustee income, the definition has been clarified to ensure there is no ambiguity.

Example

Henry is a New Zealand resident for tax purposes. He is appointed as a trustee of the newly formed MNO Trust, which has one settlor who is resident in the United Kingdom.

MNO Trust has not made any distributions to beneficiaries of the trust. On the date of his appointment as a trustee for MNO Trust, Henry will be required to register MNO Trust under section 59B(2) of the Tax Administration Act 1994.

Resident foreign trustees

A resident foreign trustee is defined in section 3(1) of the Tax Administration Act as a person who:

- acts as a trustee of a foreign trust that is not registered as a charitable entity under the Charities Act 2005; and
- is resident in New Zealand within the meaning of sections YD 1, YD 2 or YD 3 (excluding section YD 2(2)) of the Income Tax Act 2007.

This definition is unchanged from the previous disclosure requirements for foreign trusts. Amendments were made during the select committee stage of the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill to ensure the use of the same term and provide consistency.

Contact trustee

It is possible that a foreign trust may have more than one resident foreign trustee. Section 59B(7) provides that if there is more than one resident foreign trustee each resident foreign trustee is responsible for meeting obligations relating to the foreign trust, including registration, disclosure of information, annual returns, financial statements and payment of fees.

However, the trustee who applies for registration of the foreign trust then becomes responsible for communicating with the Commissioner on matters relating to the trust and is known as the “contact trustee”. The contact trustee is the only trustee that is required to communicate the required information to the Commissioner. This is provided for in section 59B(3). This provision allows the resident foreign trustees to choose the contact trustee and avoids duplication of effort and information.

If the contact trustee relinquishes that role (for example, if they are no longer a trustee or become non-resident), new subsection 59B(6) requires them to provide the name and contact details of the new contact trustee and the date on which this trustee will take over the duties of the contact trustee. The outgoing contact trustee must also confirm their own contact details or provide their updated contact details to the Commissioner.

Example

Jazz Ltd is a resident foreign trustee and currently the contact trustee for Tiny Tunes Trust. Jazz Ltd is being wound up and will no longer be a trustee. Tiny Tunes Trust has another New Zealand-resident trustee, Brass Ltd.

Jazz Ltd and Brass Ltd decide on the date that Brass Ltd will become the contact trustee for the trust. Jazz Ltd informs Inland Revenue that it will no longer be the contact trustee for Tiny Tunes Trust and that Brass Ltd will take over the role, and the date this will happen. Jazz Ltd also confirms its own current contact details and advises the email address and business address of Brass Ltd.

Time limits for registration

The criteria for eligibility for the tax exemption in amended section HC 26 of the Income Tax Act 2007 is connected to the time limits for registration set in section 59C of the Tax Administration Act 1994.

New section 59C sets out the time limits for applying to register the trust and the time limits for updating the information that must be disclosed. There are three different time limits, depending on the trust’s category:

- trusts that become required to register **after** the date of enactment (new trusts);
- trusts that become required to register **on** the date of enactment (that is, existing foreign trusts with resident foreign trustees at time of enactment); and

- trusts where each trustee is a natural person not in the business of providing trustee services.

Foreign trusts will always be in one of the first two categories, but if they also fit the third category, they may be eligible for a longer registration period.

If a trust becomes required to register **after** the date of enactment of the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017, new section 59C(1)(b) provides that the resident foreign trustee has 30 days to apply for registration of the foreign trust from the date the requirement to register begins.

Trusts in this category could include a foreign trust that is formed with a resident foreign trustee after the date of Royal assent or an existing foreign trust that does not have a resident foreign trustee until after the date of Royal assent. This means these foreign trusts have 30 days from the date of formation and the appointment of the first resident foreign trustee, respectively, to apply for registration.

Trustees of foreign trusts in existence with a resident foreign trustee at the time that the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017 received Royal assent have until 30 June 2017 to apply for registration of the trust. This is provided for in new section 59C(1)(a).

There are differing time limits depending on whether the trust has a resident foreign trustee who is in the business of providing trustee services. The previous disclosure requirements extended the time limit if the resident foreign trustee was a new migrant who was not in the business of providing trustee services to allow them an additional two years to meet their obligations. The amended disclosure rules extend this concession in recognition of the increased disclosure requirements.

New sections 59C(3) and (4) provide that regardless of whether a resident foreign trustee is a new migrant, the time limit for application is extended when all of the trustees of a foreign trust are natural persons not in the business of providing trustee services and none of the resident foreign trustees have been resident foreign trustees before. If a person has already been a resident foreign trustee they should be aware of the obligations that this role entails.

If these requirements are met, the time limit for application is extended to four years and 30 days following the first date on which the foreign trust has a resident foreign trustee.

Example: Non-professional trustees of existing trusts

Ralph was appointed as a trustee of his friend Nora's trust on 13 January 2014. Nora is the only settlor of this trust and is not a New Zealand resident. Ralph is not in the business of providing trustee services, and as a New Zealand tax resident, he is a resident foreign trustee. Under the previous disclosure rules, Ralph was required to disclose particular information to Inland Revenue by 12 February 2014. After Royal assent of the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill (21 February 2017), Ralph is now required to apply for registration of Nora's trust.

Because Ralph is not in the business of providing trustee services, he is eligible for the grace period provided for by new section 59C(3). The grace period of four years and 30 days is counted from the date that Ralph became a resident foreign trustee (13 January 2014). This means Ralph has until 12 February 2018 to apply for the registration of Nora's trust.

Example: Professional trustees and newly formed trusts

Consider Frank and XYZ Trust again. XYZ Trust was formed on 1 November 2016, and Frank, a New Zealand resident, was appointed as a trustee.

XYZ's income year corresponds with the New Zealand tax year (31 March balance date).

XYZ is an existing trust at the date of Royal assent of the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill (21 February 2017). On the day of Royal assent Frank becomes liable to apply for registration of XYZ under section 59B(2) of the Tax Administration Act. Frank regularly serves as a trustee so the time limit applying to him is that in section 59C (1)(a) – 30 June 2017.

Information to be provided at the time of application

The previous disclosure rules required resident foreign trustees to disclose certain information on the trust:

- the name or other identifying particulars;
- name and contact details of resident foreign trustees;
- whether a settlor is resident in the Commonwealth of Australia;
- details relating to status as a qualifying resident foreign trustee (if applicable); and
- any details of which resident foreign trustee is appointed as agent for the purposes of compliance with the Tax Administration Act 1994.

The amendments in the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017 update the information that must be provided at the time of registration, in line with the recommendations of the Government's April 2016 Inquiry into Foreign Trust Disclosure Rules.

Trust deed

As a starting point, section 59B(3)(a) requires that the name of the trust must be provided on application. The contact trustee must also provide a copy of the trust deed for the foreign trust (or the functional equivalent, for example, if there is no formal trust deed) along with all amending and supplementary documents (section 59B(3)(f)).

Note that a will is not a trust deed for the purposes of the foreign trust disclosure rules. However, a trust established under a will (a testamentary trust) will be a trust for these purposes.

Historical settlements

The application must also include details relating to settlements made in relation to the foreign trust (section 59B(3)(b)). These details are the date, amount, nature and settlor of each settlement.

Services provided to the trust at below market value are generally considered to be settlements, due to the broad definition of "settlement" used for the trust rules, and must be disclosed.

However, information relating to the provision of minor services at less than market value that are incidental to the activities of the trust does not need to be provided. This exclusion is intended to reduce compliance costs for trustees, and is available to both professional and non-professional trustees.

Whether a service is incidental depends on the activities undertaken by the trust and could therefore vary between trusts.

Example

John's family trust owns a property which is rented out. John's grandson mows the lawn as a favour as he lives nearby. This would be incidental to the activities of the trust.

Example

Justin's trust runs a lawn mowing business. Justin's daughter Phoebe occasionally helps by mowing lawns. This would not be incidental to the activities of the trust.

As well as being incidental to the activities of the trust, to be excluded under section 59B(3)(b), the services must also be minor. That is, the value of the services provided below market value that are incidental to the activities of the trust must also be low. This introduces a standard that applies equally to all trusts, without the additional complexities and compliance costs associated with a monetary threshold.

Section 59B(3)(b) sets three different periods for which information on settlements must be provided, depending on whether the resident foreign trustees are in the business of providing trustee services and whether the trust is formed before or after the date of Royal assent of the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill (21 February 2017).

If **any** of the trustees are not natural persons or are in the business of providing trustee services, then the period begins with the date of formation of the trust and ends with the application for registration. This is because professional trustees, regardless of whether they are the contact trustee, should have adequate records for the trust.

If **all** of the trustees are natural persons not in the business of providing trustee services, the period is shorter.

For trustees that become required to register a foreign trust on the date of Royal assent of the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill (21 February 2017) (that is, existing foreign trusts with resident foreign trustees), the trustees must provide information on settlements that date back to the **later** of the date of the trust's formation and 30 June 2013.

Example

Natalie and Greg's family trust was formed in April 2016 and Dan, a New Zealand tax resident, is appointed one of the trustees. All of the trustees are natural persons not in the business of providing trustee services. As part of the application for registration of the family trust, Dan must provide details of historical settlements. The later of April 2016 and 30 June 2013 is April 2016, so Dan must provide details of settlements since that date.

Example

Sam became the resident foreign trustee for a family trust when it was formed in August 2012. The later of August 2012 and 30 June 2013 is 30 June 2013. This means that at the time Sam applies for the trust to be registered, she must provide details on settlements made between 30 June 2013 and the date of her application.

If a foreign trust needs to be registered after the date of Royal assent of the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill (21 February 2017), the trustee must provide information on settlements that date back to the **later** of the trust's formation and four years prior to the date on which a trustee first becomes required to register the foreign trust. Trusts in this category could include a foreign trust that is formed with a resident foreign trustee after the date of Royal assent or an existing foreign trust that does not have a resident foreign trustee until after the date of Royal assent.

Example

John and Maraina's family trust is formed overseas in March 2019, but has no resident foreign trustee until December 2023, when Sophie, a New Zealand resident, is appointed to be one of the trustees. Sophie becomes liable to register John and Maraina's family trust when she becomes the first resident foreign trustee. Four years prior to December 2023 is December 2019, which is later than March 2019. This means that as part of the application for registration Sophie must provide details of settlements made on John and Maraina's family trust dating back to December 2019, not March 2019 (the date of formation).

The table below summarises the different periods for which details of historical settlements must be provided on application for registration.

| | Start date | End date |
|--|--|---------------------------------------|
| Any of the trustees are not natural persons or are in the business of providing trustee services. | Formation of trust. | Date of application for registration. |
| All trustees are natural persons not in the business of providing trustee services | | |
| Trustee becomes required to register trust on date of Royal assent (existing foreign trusts with resident foreign trustees). | Later of: <ul style="list-style-type: none">• formation of trust• 30 June 2013. | Date of application for registration. |
| Trustee becomes required to register trust after date of Royal assent (existing foreign trusts that subsequently appoint their first resident foreign trustee, or new foreign trusts with a resident foreign trustee). | Later of: <ul style="list-style-type: none">• formation of trust• four years prior to the first date on which a trustee becomes required to register the trust. | Date of application for registration. |

Details about settlors, trustees and beneficiaries

In addition to information on historical settlements, section 59B(3)(c), (d) and (e) provides that the application must also include information relating to settlors, beneficiaries and trustees, as well as other persons with certain powers.

Section 59B(3)(c)(ii)–(iii) describes other persons who have specific powers in connection to the trust which allow them to have some control over the trust. Specifically these address persons who have a power to:

- appoint or dismiss a trustee, to amend the trust deed, or to add or remove a beneficiary (59B(3)(c)(ii));
- control the exercise of one of the powers mentioned above (59B(3)(c)(iii)); or
- control a trustee in their administration of the trust (59B(3)(c)(iv)).

Broadly, these powers are intended to cover the powers that a “protector” of a trust might have over the administration or control of a trust.

The information required under these sections does not vary depending on whether the trustees are in the business of providing trustee services.

The information required is summarised in the table.

| Relevant person | Information to be provided |
|--|--|
| All trusts | |
| <ul style="list-style-type: none"> • Each settlor, excluding persons who only provide minor services at less than market value that are incidental to the activities of the trust (section 59B(3)(c)(i)). • Each person with a power to appoint or dismiss a trustee, to amend the trust deed, or to add or remove a beneficiary (and each person with a power to control any of these powers) (sections 59B(3)(c)(ii) and (iii)). • Each person with a power to control a trustee in the administration of a trust (section 59B(3)(iv)). • Each trustee (section 59B(3)(c)(v)). | <ul style="list-style-type: none"> • Name • Email address • Physical residential or business address • Jurisdiction of tax residence • Taxpayer identification number • Connection with the trust. |
| Fixed trusts | |
| <ul style="list-style-type: none"> • Each beneficiary who is not a minor (section 59B(3)(c)(vi)). • Each nominee for a beneficiary (section 59B(3)(c)(vi)). • The parent or guardian of each beneficiary who is a minor (section 59B(3)(c)(vii)). | <ul style="list-style-type: none"> • Name • Email address • Physical residential or business address • Jurisdiction of tax residence • Taxpayer identification number • Connection with the trust. |
| <ul style="list-style-type: none"> • Each beneficiary who is a minor (section 59B(3)(d)). | <ul style="list-style-type: none"> • Name • Age • Taxpayer identification number. |
| Discretionary trusts | |
| <ul style="list-style-type: none"> • Each beneficiary (section 59B(3)(e)). • Each class of beneficiary (section 59B(3)(e)). | <ul style="list-style-type: none"> • Details sufficient for the Commissioner to determine when a distribution is made, whether a person is a beneficiary. |

Section 59B(3)(c) states that a person's physical residential or business address must be provided. This means:

- for natural persons, their physical residential address; and
- for non-individuals, the business address (or registered office or servicing address).

If the email address is known to a resident foreign trustee, it must be provided to the Commissioner of Inland Revenue. If no email address is available, a contact phone number should be provided instead.

For beneficiaries of fixed trusts who are minors, the trustee must provide full contact details for each minor's parent or guardian, in addition to limited information about the minor (name, age and taxpayer identification number). A minor may not always have a taxpayer identification number, but if they do have one, it must be provided.

For the purposes of the foreign trust disclosure rules, a "minor" follows the trust tax rules and is a natural person who is under the age of 16. When a minor reaches the age of 16, the contact trustee must update the registration details held by the Commissioner. See the section "Subsequent changes to information provided on registration" for further information.

Signed declaration

As part of the application process for registering a foreign trust, section 59B(4)(c) requires the contact trustee to provide a signed declaration that each person referred to in section 59B(3)(c)(i)–(vii) has been informed of, and has agreed, to provide information necessary for compliance with the requirements relating to the provision of information regarding the trust and persons connected with the trust imposed by:

- the Tax Administration Act 1994; and
- the Anti-Money Laundering and Counter Financing of Terrorism Act 2009; and
- all regulations made under these Acts.

As part of this declaration, the contact trustee must obtain the agreement of all specified persons. If a person is incapacitated, their legal guardian, personal representative or power of attorney must provide the agreement on their behalf.

Resident foreign trustees may feel more confident that they have satisfied their statutory obligations by obtaining the signatures of the relevant persons as proof of their agreement.

The declaration was a specific recommendation of the Government Inquiry into Foreign Trust Disclosure Rules and ensures that all persons have turned their minds to the relevant laws and regulations that they will need to comply with.

If any of the persons specified in section 59B(3)(c)(i)–(vii) are deceased, section 59B(4)(a) provides that in the signed declaration, the contact trustee should state that the agreement cannot be obtained as the person is deceased.

If a person cannot be located, section 59B(4)(b) provides that the contact trustee should include in the signed declaration an outline of their attempts to find the person.

If incorrect information is disclosed to Inland Revenue as part of the registration or ongoing disclosure processes, including as part of the signed declaration, the resident foreign trustee could have penalties imposed under Part 9 of the Tax Administration Act 1994. For example, knowledge offences apply for knowingly providing incorrect information required under tax laws. Evasion offences may also apply.

Subsequent changes to information provided on registration

Following the registration of a foreign trust, if there are any changes to the information provided on registration as set out in section 59B(3), section 59B(5) requires the contact trustee to inform the Commissioner of Inland Revenue of the changes and provide a signed declaration required under section 59B(4) for the alteration or addition.

New section 59C(2) requires the contact trustee to provide this updated information to the Commissioner of Inland Revenue within 30 days of becoming aware of the change.

Example

The Troy Trust is a registered foreign trust. After registration, Ed becomes a settlor. The contact trustee must provide to the Commissioner of Inland Revenue, Ed’s details including his email address, physical residential address, where he is tax resident and his taxpayer identification number. The contact trustee must also provide an updated signed declaration that Ed has been informed of, and has agreed to provide information necessary for compliance with, the requirements relating to the provision of information relating to the trust and persons connected with the trust imposed by the Tax Administration Act 1994, and the Anti-Money Laundering and Counter Financing of Terrorism Act 2009 and all regulations made under these Acts.

Annual disclosure returns and financial statements

An ongoing requirement for the contact trustee following the registration of a foreign trust is to prepare an annual return for the foreign trust and send it to the Commissioner of Inland Revenue. This is set out in new section 59D.

Section 59D(2) states that the annual return must be in a form prescribed by the Commissioner of Inland Revenue and must include the following.

| Information | Detail |
|--|--|
| Financial statements for the trust for the return year (section 59D(2)(a)). | If the trustee prepares financial statements or is required to prepare financial statements. |
| Settlements made on the trust in the return year, excluding the provision of minor services incidental to the activities of the trust (section 59D(2)(b) and (c)). | Each settlement: <ul style="list-style-type: none"> • date • nature • amount • settlor’s name • settlor’s email address • settlor’s physical residential or business address • settlor’s jurisdiction of tax residence • settlor’s taxpayer identification number. |

| Information | Detail |
|---|--|
| Distributions to beneficiaries made during the return year (section 59D(2)(d) and (e)). | <p>Each distribution:</p> <ul style="list-style-type: none"> • date • amount • nature • beneficiary's name • beneficiary's email address • beneficiary's physical residential address • beneficiary's jurisdiction of tax residence • beneficiary's taxpayer identification number. <p>If the beneficiary is a minor:</p> <ul style="list-style-type: none"> • minor's age • minor's jurisdiction of tax residence • minor's taxpayer identification number • parent or guardian's name • parent or guardian's email address • parent or guardian's physical residential address • parent or guardian's jurisdiction of tax residence • parent or guardian's taxpayer identification number. |

At the time of registration, the contact trustee for a foreign trust must provide information about settlements made on the trust before the trust's registration. To ensure that the information held by the Commissioner of Inland Revenue is kept up to date, subsequent settlements must be reported in the annual return. Consistent with the disclosure of historical settlements, information relating to the provision of minor services at less than market value that are incidental to the activities of the trust does not need to be provided. Also see the section "Information required on registration".

Likewise, detailed information about distributions made during the return year need to be included in the annual return. This includes identifying information about beneficiaries, in line with the information provided at the time of registration.

Financial statements

As noted above, section 59D(2)(a) requires that if the trustee of a foreign trust prepares financial statements or is required to prepare financial statements, these must be provided with the annual return. The intent is that even if a trust does not prepare financial statements for other purposes, they must prepare financial statements in order to meet their obligations under the foreign trust disclosure requirements.

An Order in Council will be made under section 21C of the Tax Administration Act 1994 to specify the minimum standards for financial statements for foreign trusts. The Order in Council will make it clear for foreign trusts, including those that do not ordinarily prepare financial statements, what information must be provided.

Due dates

Section 59D(3) requires the annual return, including the financial statements, to be filed with the Commissioner of Inland Revenue within six months after the trust's balance date, or by 30 September if the trust does not have a balance date (which is six months after the end of the tax year). This should allow resident foreign trustees adequate time to gather required

documentation and meet their obligations, as it is acknowledged that much of the information may be held overseas.

Annual returns must be provided for every year that includes a period which the foreign trust is registered, or is required to register under section 59B. However, a transitional rule in 59D(1)(c) allows resident foreign trustees who become liable to register a trust on the date of enactment, to file returns only for years that begin after 31 March 2017.

No additional time is provided to non-professional trustees, or those with tax agents.

Fees

At the time an application for registration is lodged or an annual return is filed, a resident foreign trust must pay the registration fee or annual return fee, as prescribed in sections 59B(2) and 59D(1).

The fees are set out in new section 59E. Section 59E(1) provides that the Governor-General may, from time to time, make regulations prescribing either of these fees.

However, until the first regulation has been made under section 59E(1), the fees are set at:

- \$270 (including goods and services tax) for an application for the registration of a foreign trust; and
- \$50 (including goods and services tax) for an annual return for a foreign trust and a return year.

A number of concessions have been introduced into the foreign trust disclosure rules for non-professional trustees. In line with other concessions relating to the period for registration and the provision of historical settlements, section 59E(5) allows an exemption from both the registration fee and annual return fee for resident foreign trustees who are natural persons not in the business of providing trustee services. To be eligible for this exemption, **all** resident foreign trustees of the foreign trust must be natural persons not in the business of providing trustee services.

Information sharing with other agencies

Information sharing with domestic enforcement agencies

Section 81 of the Tax Administration Act 1994 has been amended to add a new subsection 81(4)(z). Section 81(4) contains exceptions to the tax secrecy rules and allows Inland Revenue to share specified information.

New subsection 81(4)(z) specifically allows Inland Revenue to share information relating to the registration or the absence of registration of a foreign trust with the Department of Internal Affairs and the New Zealand Police. This will enable Inland Revenue to share its register of foreign trusts with the Department of Internal Affairs and the New Zealand Police. This follows a specific recommendation of the Government Inquiry into Foreign Trust Disclosure Rules.

In addition, information collected under the amended disclosure rules will be shared with the Overseas Investment Office once an agreement is in place.

Information sharing with tax treaty partners

Inland Revenue is also able to share information internationally with its tax treaty partners under exchange of information arrangements (double tax agreements, tax information exchange agreements, and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters). Inland Revenue can provide information in relation to foreign trusts to other tax authorities under exchange of information agreements if relevant parties (for example, settlors and beneficiaries) are resident in those jurisdictions.

However, it is important to note that Inland Revenue is not obligated to send foreign trust information to jurisdictions with which it has a tax treaty if it believes there is a risk in how that information will be used or disclosed.

Exchange of information articles in tax treaties contain restrictions on what the information exchanged can be used for. These articles provide that a jurisdiction is not obligated to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or any information if its disclosure would be contrary to public policy.

Further, exchanged information can only be disclosed to specific persons, and can only be used by those persons for specified purposes.

Consequential amendments

A number of sections have been repealed or amended.

In the Income Tax Act 2007, sections HC 26(2), (3), and (4) have been repealed as section HC 26 has been substantially rewritten.

The definitions of “settlement” and “settlor” have been repealed from section 3(1) of the Tax Administration Act 1994. They are identical to the definitions provided in section YA 1 of the Income Tax Act 2007, so a specific definition is not necessary due to the operation of section 3(2) of the Tax Administration Act 1994.

The definition of “qualifying resident foreign trustee” has also been repealed as it was a feature of the previous foreign trust disclosure rules that was not retained.