

# Regulatory Impact Statement

## Amateur sports promoters' tax exemption and sporting trusts

### Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by Inland Revenue.

It provides an analysis of options to determine whether trusts should be included in the ambit of the current income tax exemption for amateur sports promoters.

Currently, trusts are not eligible for the income tax exemption for amateur sports promoters in the Income Tax Act 2007. Trusts are treated differently to other legal forms (such as a company) even though they may have the same or similar sporting purposes and meet the other requirements of the exemption. There is no policy justification for excluding trusts from the ambit of the income tax exemption in the modern environment.

The question that this RIS seeks to address is whether the current tax treatment of amateur sports promoters aligns with current policy intentions. As a matter of principle, tax exemptions should be applied consistently to organisations with the same objects and purposes, regardless of their legal form. Therefore, the preferred option is to amend the law to confirm that trusts who otherwise meet the requirements of the exemption may be eligible for the exemption.

Ministers have held limited discussions with sporting trusts and their tax advisers to understand the nature and extent of the problem and what options were available to address it. We believe this level of consultation was appropriate given the nature and size of the problem.

The Treasury and Sport New Zealand were also consulted during the policy development process.

There are no environmental or cultural impacts from these recommended changes.

There are no other significant constraints, caveats and uncertainties concerning this regulatory impact analysis. The preferred option would not restrict market competition, reduce the incentives for businesses to innovate and invest, unduly impair private property rights or override fundamental common law principles.



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## **STATUS QUO AND PROBLEM DEFINITION**

### **Current law**

1. Section CW 46 of the Income Tax Act provides that the income derived by a “club, society or association” established mainly to promote an amateur game or sport is exempt income. The game or sport must be conducted for the recreation or entertainment of the general public, and no part of the funds is available for the pecuniary profit of a member, proprietor or shareholder.

2. Inland Revenue’s current interpretation is that section CW 46 does not apply to “trusts” that have been established for the purposes of promoting amateur sport. This is on the basis that a trust is not a “club, society, or association”. The result of this interpretation is that a trust that has been established to promote an amateur game or sport, and that otherwise meets the requirements of section CW 46, is treated differently from other entities established with an identical purpose.

### **The problem**

3. The problem is that the current law does not align with current policy settings.

4. Inland Revenue’s review of the policy history of section CW 46 found no material that directly addressed the question of whether trusts were explicitly considered when the exemption was introduced in 1933. However, there is policy documentation associated with the 1948 amendment to section CW 46 that suggests that the types of bodies intended to benefit from the tax exemption included district and national boxing associations; clubs and associations connected with cricket, tennis, golf, rugby and association football; and generally any entity or organisation established for the promotion of any amateur game or sport.

5. The policy documentation seemed to focus on the purpose rather than the legal form of the entity carrying out that purpose. It may be that trusts were not specifically considered at the time because the trust form was not a common vehicle for carrying out promotion of amateur sporting activities. The proliferation of trusts has been a relatively recent occurrence.

6. We consider that, in the modern environment, there is no policy basis for excluding trusts from the amateur sports promoters’ income tax exemption. As a matter of principle, tax exemptions should be applied consistently to organisations with the same objects and purposes, regardless of their legal form.

7. Recently, there have been several calls from the sporting community for the Minister for Sport and Recreation and the Minister of Revenue to prioritise an amendment to the Income Tax Act 2007 to address an anomaly in relation to the tax treatment of sporting trusts. Advice received from some tax practitioners who act for these sporting trusts is that community-based Auckland sporting trusts currently rely on section CW 46, and if Inland Revenue were to pursue these trusts, they are likely to be exposed to unexpected and significant taxation liabilities.

8. There are 20,593 entities currently relying on the amateur sport promoters' exemption and 152 of them have a legal form of a trust. It appears that Inland Revenue has in the past accepted trusts as meeting the eligibility requirements of the amateur sport promoters' exemption. Therefore, the effect of Inland Revenue's current interpretation is that these entities would no longer be eligible for the exemption.

9. Inland Revenue has also undertaken a sample review of the current sporting trusts that are not currently relying on the amateur sport promoters' exemption but who might be eligible for the exemption if trusts were included. The review indicated that these entities pay little or no tax currently. This may be due to the fact that these entities are eligible for the \$1,000 deduction for non-profit organisations and some might qualify for a tax exemption as charity.

## **OBJECTIVES**

10. The objectives of the current examination are:

- To provide certainty of tax treatment for organisations who undertake activities relating to amateur sports promotion.
- To provide fair and consistent tax outcomes for amateur sports promoters with different legal structures.

## **REGULATORY IMPACT ANALYSIS**

11. Inland Revenue considers there is only one feasible option for addressing the current problem - that is, to change the law. The status quo and non-regulatory options would not have been feasible as Inland Revenue's view of the existing law is well-settled and clear.

12. The two options assessed below are:

- *Option 1:* status quo which is to retain the existing law. Under this option the law would remain unchanged. Sporting trusts would continue not to be eligible for the income tax exemption for amateur sports promoters; or
- *Option 2:* change the law (preferred option). Under this option, the section CW 46 of the Income Tax Act 2007 would be amended to include sporting trusts and the amendment would be retrospective in nature. The retrospective amendment ensures that sporting trusts that have relied on the exemption will be unaffected by Inland Revenue's current interpretation.

## **Analysis**

13. The table below summarises for each option which of the objectives it meets as well as the economic, fiscal, administrative, and compliance impacts.

Option	Objectives met or partly met	Economic impact and fiscal impacts	Compliance and administrative impacts	Net impacts
<p><b>Option 1</b></p> <p>Status quo, which is to retain the existing law</p>	<p>This option meets the objective of certainty but not fairness</p>	<p>No discernible economic impacts</p>	<p>Increased tax and compliance costs for approximately 152 entities as they move from being tax-exempt to taxpaying entities</p> <p>Trusts might also incur compliance costs by restructuring into an eligible entity to access the exemption</p> <p>Increased administrative costs for Inland Revenue</p>	<p>The status quo is not sustainable as it leads to unfair outcomes as trusts are treated differently to other legal forms</p>
<p><b>Option 2</b></p> <p>Change law by including sporting trusts in the income tax exemption for Amateur sports promoters</p>	<p>This option meets both objectives</p>	<p>No discernible economic impacts</p> <p>Sporting trusts that have not relied on the exemption could do so after the proposed change, we note that the fiscal cost would be negligible for this group because most of these entities would currently be relying on other tax exemptions. Fiscal costs would be negligible</p>	<p>There will be both administrative costs for Inland Revenue and compliance costs for sporting trusts in situations where sporting trusts who do not currently rely on the exemption seek Inland Revenue's confirmation that they are eligible for the exemption. However, the administrative cost implications arising would not be significant</p>	<p>This option will provide certainty for sporting trusts and improve the equity between sporting trusts and other legal structures involved in amateur sports promotion</p>

14. There are no environmental, social or cultural impacts from the proposed changes.

## **CONSULTATION**

15. Inland Revenue and Ministers have held limited discussions with sporting trusts and their tax advisers to understand the nature and extent of the problem and what options were available to address it.

16. It was noted in these discussions that there are community-based Auckland sporting trusts currently relying on section CW 46, and if Inland Revenue were to pursue these trusts, they are likely to be exposed to unexpected and significant taxation liabilities. They also considered that the only way to address the anomaly is to change the law to enable trusts who meet the purpose and technical requirements of the exemption to be eligible for the exemption. We believe this level of consultation was appropriate given the nature and size of the problem.

17. The Treasury and Sport New Zealand were consulted during the policy development process.

## **CONCLUSIONS AND RECOMMENDATIONS**

18. The question that this RIS seeks to address is whether the current tax treatment of amateur sports promoters aligns with current policy intentions. As a matter of principle, tax exemptions should be applied consistently to organisations with the same objects and purposes, regardless of their legal form. We believe the only feasible way to align the current legislation with current policy intentions is to change the law (option two) – that is, to amend the law to confirm that trusts may be eligible for the income tax exemption for amateur sports promoters.

19. Furthermore, we consider that the amendment should be retrospective in nature on the basis that it will give current sporting trusts that are relying on section CW 46 certainty that their tax-exempt status is preserved. We consider that it is sufficient for the amendment to apply for the past four income years, which corresponds to the time in which the Commissioner of Inland Revenue can reassess tax liabilities.

## **IMPLEMENTATION**

20. Implementing the proposed change will require an amendment to the Income Tax Act 2007. It is recommended that the necessary amendments be included in the Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill by way of a Supplementary Order Paper (SOP). That SOP would be tabled at the Committee of the Whole House stage. This stage may occur as early as 6 May 2014.

21. Inland Revenue recommends that the amendment takes effect retrospectively for the past four income years, which corresponds to the time in which the Commissioner of Inland Revenue can reassess tax liabilities.

22. The Minister of Revenue and the Minister for Sport and Recreation will issue a press statement announcing the proposal, when the SOP is introduced.

## **MONITORING, EVALUATION AND REVIEW**

23. Inland Revenue will monitor the outcomes pursuant to the Generic Tax Policy Process (“GTTP”) to confirm that they match the policy objectives. The GTTP is a multi-stage policy process that has been used to design tax policy in New Zealand since 1995.

24. The final step in the process is the implementation and review stage, which involves post-implementation review of legislation, and the identification of remedial issues. Opportunities for external consultation are also built into this stage. Any necessary changes identified as a result of the review would be recommended for addition to the Government's tax policy work programme.