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Ms Kerryn Mcintosh-Watt
Policy Director
Inland Revenue

Dear Madam,

Inland Revenue's post-implementation review of the trust disclosure rules considers their future – broadly, repeal, continue, continue with modifications.

Inland Revenue has completed its own report. [1] This report provides my separate view.

In summary:

- The trust disclosure rules are not well supported by taxpayers and their advisors. The compliance costs and scepticism of their purpose leads to a judgement that the rules are not worthwhile.
- The lack of GTPP and the short time to implement contributed significantly to that perception.
- Despite that, Inland Revenue has benefited from the rules (from a compliance perspective especially) and, in my view, now better understands trusts. The disclosure rules provided Inland Revenue the impetus to focus on trusts in the tax

[1] My report uses Inland Revenue's draft of 27 March 2025. I understand there are no material changes in its final report.

system. (In other words, without the rules, the degree of focus and insight would not have occurred.) The publication of the information and insights provides useful information to taxpayers.
- The original purpose of the trust disclosure rules is overly narrow – broader compliance, enforcement and policy, as well as NZ Inc, objectives are served by the rules.
- The trust disclosure rules and the post-implementation review has usefully identified further policy and compliance work that could and should be done. (A restated purpose, relegating the 39% tax rate purpose, should allow further analysis and insights.)
- There are wider Government issues, Anti-Money Laundering, statistics, financial accounting rules, which impact the trust disclosure rules. They impose some constraints and opportunities to reduce costs.

Although potentially not required by my brief, I conclude that, in my judgement, the regime should continue but with further modifications to reduce compliance costs and continued reviews to confirm the rules continue to serve their purpose[2].

In all cases, my recommendation is that GTPP is followed so that taxpayer and advisor concerns can be addressed.

My report provides further consideration and detail for my conclusions and recommendations.

It is to be hoped that the two reports contribute to a better understanding of the effects of the regime and its uses.

Disclosures

My assistance to Inland Revenue has necessitated engagement and collaboration. I consider my report responds to the evidence as I see it rather than reflecting capture by Officials. However, I accept that, as I have had a limited ability to consult on my own report, others may have a different view. I recommend that this report is included in the further consultation so that different views can be considered.

I have relied on Inland Revenue to summarise the stakeholder engagement and the 2023 data. I have no reason to believe that the results presented to me mis-represent the data. I have not however, checked to underlying data.

[2] Some Inland Revenue recommendations have already been implemented by way of amendments to the Taxation (Annual Rates 2024-25, Emergency Measures and Remedial Matters) Bill

I am a trustee of several trusts and a beneficiary. I am therefore affected by the trust disclosure rules.

Caveats

Strictly, a trust is not an entity but I have referred to trust(s) as if they were for readability.

This report is to be published with Inland Revenue's report. It will be public rather than confidential information. However, I take no responsibility for how my report may be used by a reader.

Acknowledgement

I acknowledge the collaborative approach taken by Inland Revenue's team. I thank them for that approach.

Yours sincerely

John Cantin
Cantin Consulting

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PART I – THE SCOPE

The review included a survey of taxpayers, stakeholder engagement, analysis of the data from the 2023 disclosures, and consideration of the reasons for the trust disclosure rules. These were used to inform an assessment of the rules' desirability.

Taxpayer and advisor views

Inland Revenue had previously undertaken stakeholder engagement to consider what could be changed for the 2023 year. The survey and stakeholder engagement sought to build on that previous engagement after two years of operation of the regime.

I assisted in the design of the survey and stakeholder engagement. (Due to the timetable and deadline, there was some limited consultation on the design of the survey and stakeholder engagement.) The results of the survey and stakeholder engagement is included in Inland Revenue's report.

Inland Revenue's own assessment

I also assisted Inland Revenue in its own assessment of the benefits and costs to the tax system and wider government objectives of the trust disclosure rules. This included being able to ask questions, provide comments as well as suggestions of matters that could be considered.

Inland Revenue's report is separately prepared and published in parallel with my report.

PART II – EXECUTIVE SUMMARY

The taxpayer view

My brief was, especially, on taxpayer compliance costs and benefits. Inland Revenue has provided me with the results of the survey and stakeholder engagement to provide evidence on those costs and benefits. Part IV of my report considers that evidence and draws conclusions and recommendations.

It is fair to say that the stakeholder view is that stakeholders do not understand why the regime exists and strongly advocate for its repeal. Stakeholders sought a robust consideration of the desirability of the regime to support repeal. Stakeholder views are supported by the perceived cost to implement the regime and a variety of concerns for its operation in practice.

I consider that the key reasons for the lack of support is the lack of the Generic Tax Policy Process (GTPP) and the short time frame for implementation. Before the original introduction of the rules there was limited collaboration with Inland Revenue to provide understanding of how trusts operate and implement a regime which has regard to existing information flows. This short timeframe also meant that Inland Revenue did not clearly establish why certain information was necessary. An overlay is the uncertainty of specific rules and taxpayer concerns regarding the potential for penalties - trustees sought to provide a definitive amount for uncertain amounts.

I recommend that GTPP be followed to provide at least an understanding of the reasons for future policies (not just those related to the trust disclosure rules) and to ensure that Inland Revenue promotes policies which are practical while managing the perceived risks to the tax system.

I recommend specific tax policy measures be considered, subject to GTPP. These measures arise from stakeholder engagement.

Inland Revenue view

In its report, Inland Revenue responds to the feedback, particularly in relation to the reasons why specific information is required, and reports on the 2023 and survey data, considers NZ Inc benefits and concludes that the regime should continue at least in the short term.

In my view, the report contains, with the benefit of the stakeholder engagement and the results of the regime's operation, a current (re)statement of the purpose of the regime and why certain data should be provided. This was not done, at least explicitly and publicly, when the regime was enacted.

In Part V of my report, I consider Inland Revenue's report. I respond to Inland Revenue's analysis, make some observations of my own.

Although strictly I do not need to have a view on Inland Revenue's recommendation, I consider it may be helpful to do so.

My view is the regime should continue. Briefly, there are tax administration and policy reasons to require the information in the short term. There are also broader reasons for its continuation – there is a wider benefit of Government collecting the information for its own purposes.

My view may be seen as too heavily discounting the compliance costs – that the costs outweigh the benefits. However, I am particularly mindful that trusts are and will be a focus of New Zealand's anti-money laundering and counter-terrorism financing commitments. If there is no trust disclosure regime it is likely there will be a different regime with its own compliance costs. No work has been done to determine whether that would be more or less than the current regime, but it is unlikely to be costless and may require another agency to operate those rules.

Further, my recommendation is that work continues to reduce compliance costs. This covers for example:

- providing options for certain types of data based on what the trust produces;
- providing guidance on acceptable methods of valuing non-cash distributions;
- considering broader guidance for financial statements for trusts;
- determining whether the multiple forms provided for compliance can be rationalised. This is likely to require Inland Revenue and Statistics NZ to collaborate. (The requirements for completing an IR10 are uncertain for taxpayers.)

These cost mitigation measures require collaboration with taxpayers to ensure that changes do not add to compliance costs. I have provided a model of how trusts operate and how information is generated. This should be tested to assist with ensuring that the requirements align as far as possible with how trusts operate and generate information.

My review has also prompted a conclusion that it is desirable to consider the policy objectives of the trust regime more broadly.

Compliance costs from the disclosure regime arise because "settlor" is broadly defined. The "settlor" definition is broad as a major target of the rules are trusts settled outside New Zealand by New Zealand residents. This breadth causes difficulties for New Zealand established trusts. Whether this broad definition is necessary for all cases is a useful policy decision to consider. A change in that definition is likely to help with compliance.

Further, a trust is viewed in a similar way to a company. Its assets are held separately and their use needs to be considered for potential tax effects. This contrasts with direct holdings. A person who owns their own home has no reporting obligations and does not have to consider whether anyone has a non-cash benefit. If a trust was viewed in the same way, as economically holding the assets for beneficiaries, a use of non-income earning assets for less than market value by a beneficiary, may not need to be considered.

Both of these are questions to be considered and answered in the medium term.

Finally, I return to my key reason for why the trust disclosure regime is costly – in actual and psychic costs - the lack of GTPP. My view is that Inland Revenue's conclusion should be subject to GTPP. However, this will require stakeholders to engage with the report rather than their historical perception of the regime.

PART III – RECOMMENDATIONS

This section provides a high-level guide to my recommendations which are discussed in various parts of the report. Bear in mind the key messages in Part IV:

- trusts play an important role in New Zealand and their appropriate taxation is significant for the integrity of the tax system;
- evidence is required to confirm that:
  - the current trust tax policy or any proposed changes is appropriate; and
  - that the current rules are being properly applied.

Recommendation	Comment
The regime should continue but should be further reviewed with specific ongoing work to rationalise the regime to reduce compliance costs.	The disclosure rules provide useful information for administration and policy. If used well, it will provide evidence of the continued appropriateness of the trust tax regime. This recommendation should be subject to consultation (GTPP).
Stakeholders should take account of an updated purpose of the trust disclosure rules when considering its costs and benefits.	The original purpose should be restated so that stakeholders can factor that into their responses to the recommendation.
GTPP should be followed generally. If not, the risks to good policy should be acknowledged and managed.	The perception of the rules and its associated cost would have been better managed with GTPP.
Information requests should be aligned with trust processes.	Costs are generated when the tax disclosures are different from what is already produced.
Provide guidance on acceptable valuation methods.	Uncertainty of whether an amount is correct creates costs.
Consider broader guidance on financial statements methods.	There is no broader financial statement or accounting standard to guide trustees. A commercially led approach may help trusts with compliance.
Rationalise the forms and duplication.	Multiple provision of the same information creates psychic costs.

Consider making the provision of information to trustees mandatory.	Beneficiaries and settlors may not provide information as there is no compulsion to do so.
Consider policy changes which may justify information requests and the cost/benefit trade off including, for example, building depreciation, separating income and non-income earnings assets.	The potential for policy changes justifies the collection of information useful to that policy change. However, this requires balancing the costs with the validity of the information, any gaps in determining the effect of a policy change, and acceptable margins for error in deciding to collect the information.
Consider what information is useful for non-cash distributions.	Non-cash distributions are relevant for possible policy changes and for understanding trust use.
Consider simplifying the settlor and appointor definitions.	Differences between tax and other definitions creates cost.
Consider how trusts are characterised for the trust rules – as separate “entities”? Whether that characterisation is necessary/desirable for all trusts?	Trusts hold non-income generating assets which are used by beneficiaries. The trust rules and disclosure rules include these as items which need to be considered for compliance. This is responsible for much of the complexity.
Consider the disclosures and available information for broader tax related insights, including insights which are not focused on 39% rate beneficiaries. The annual analysis should be published.	The focus on 39% rate beneficiaries can be usefully expanded. A benefit of the disclosure regime is what it can say about trust use, the information should be analysed and published annually.
Consider and establish a trust operating and information model to guide application of the regime.	Aligning information requests with trust processes should reduce costs.

PART IV – MY POSITIONING STATEMENTS

The place and role of trusts

Trusts have a wide range of uses and hold and manage a wide range of assets. Although some have an unfavourable view of trusts, they are an alternative to companies as a vehicle for holding assets and therefore for carrying out activities. A company generally benefits shareholders in proportion to their shares, a trust benefits beneficiaries when they meet the trust's rules and objectives. Beneficiary entitlements and distributions can therefore vary with need. A trust is more flexible than a company and so is a valid and reasonable choice to meet the objectives of settlors.

Trusts which are in the income tax base are a subset of trusts. Many New Zealand trusts (probably more than elsewhere in the world) hold essentially private use assets (such as family and holiday homes). Most New Zealand trusts are "simple" trusts but there are some with complex rules (per their deeds) and with complex operations.

Regulation, or standards, for trusts are now embodied in the Trusts Act 2019. This was the result of the Law Commission's review of the law relating to trusts. It found a need to codify the rules for the establishment and operation of trusts. The codification of the rules has led many trustees to consider whether a specific trust continues to meet the objectives for which it was established. This assessment included the costs of meeting the Trusts Act standards.

Importantly, the Law Commission did not find a need to prevent trusts from operating at all. This means they are and remain a feature of New Zealand commercial and family life.

It is therefore important that the taxation effects of trusts are appropriate.

The principles I have applied

My view is that evidence-based policy development requires information. That means that Government must be provided with the tools to gather that information. Evidence-based policy cannot be done without it.

This also means that I should not resist the provision of such tools because I disagree with a possible policy response. That is not a good reason for preventing the information gathering.

However, that should not prevent my disputing the insights gathered from the data – there are often a number of reasons why the data shows a particular result. Care needs to be taken in the conclusions.

Further, the tools and the information requested must be proportionate to the purpose. There should not be an unlimited ability to request information.

The trust disclosure rules have policy, processing and enforcement purposes.

Although New Zealand states that it operates and relies on voluntary compliance, much of its compliance is achieved through mandatory obligations. Most personal tax is collected via PAYE, so employees do not volunteer their compliance on salary and wages. However, for distributions from trusts, as there is not a comprehensive withholding regime, matching becomes more important. Disclosures therefore have an important role for Inland Revenue's processing and enforcement functions.

Equally, trusts should be a focus for tax policy consideration. They are a widely used vehicle. Some of their tax results are due to the nature of a trust, some are due to specific tax policy choices. Information is required to confirm whether the tax rules apply to produce appropriate results. This is especially the case because of a view that trusts facilitate taxpayers paying less tax than they should.

PART V – STAKEHOLDER VIEWS OF THE REGIME

Stakeholder engagement themes

Survey comments and stakeholder engagement have provided consistent themes on why the compliance costs of the disclosure rules are considered to be a problem:

- There is a lack of taxpayer understanding of why certain information is required to be disclosed by IR. This is compounded by scepticism of especially why the policy purpose of the disclosures (to assess the impact of the 39% personal tax rate) was sought by Government – the trust disclosure rules were seen as a precursor or excuse to introducing a 39% trustee rate.
- Related to the lack of reasons for requiring information is that the information requested has not been "risk assessed" – to determine how and why the data provides information on risks to the tax base. More information than required is therefore requested of all trusts.
- The quality of the information provided will be variable and potentially misleading.
- Required disclosures do not align with existing processes, systems and terminology. Further, there is duplication in the provision of some information (through the IR10 for example).
- Non-financial information can be difficult to provide as:
    - not all that information was held;
    - there are differences in the way terms are defined for tax and trust purposes; and
    - there is no compulsion on affected parties to a trust to provide the information.
- There is some non-tax benefit to the disclosures – helping some trustees better understand the trust and communicate with beneficiaries. However, most trusts have seen no benefit at all.

These responses indicate difficulties with the processes to implement the rules as well as with the use of the information.

Survey conclusions

The survey provides some data on the actual costs incurred by trusts to comply with the rules.

The dollars

Total fees were reported as:

Fees	2021 ($)	2022 ($)	2023 ($)
Financial Statements	759,872.59	711,081.27	873,779.33
Tax Returns	307,374.34	295,306.24	334,332.44
Collation	n/a	456,590.92	64,114.50
Total	1,067,246.93	1,462,978.43	1,272,226.27

And the differences as:

Fees	Differences ($)		
	2022 to 2021	2023 to 2022	2023 to 2021
Financial Statements	(48,791.32)	162,698.06	113,906.74
Tax Returns	(12,068.10)	39,026.20	26,958.10
Collation	456,590.92	(392,476.42)	64,114.50
Total	395,731.50	(190,752.16)	204,979.34

There are a number of ways to analyse the data, but the averages are as follows:

Respondent Averages	2021 ($)	2022 ($)	2023 ($)
Financial Statements	1,862.43	1,742.85	2,141.62
Tax Returns	753.37	723.79	819.44
Collation	n/a	1,119.10	157.14
Total	2,615.80	3,585.73	3,118.20

And the average differences from year to year and from pre to post years is:

Respondent Averages	2022 to 2021 ($)	2023 to 2022 ($)	2023 to 2021 ($)
Financial Statements	(119.59)	398.77	279.18
Tax Returns	(29.58)	95.65	66.07
Collation	1,119.10	(961.95)	157.14
Total	969.93	(467.53)	502.40

In short, for those who reported fees, the average increase was $970 from 2021 to 2022, a decrease of $468 from 2022 to 2023 and an increase of $502 from 2023 to 2021. The data suggests collation of the information was the driver of first year costs, these dropped substantially in the second year, but financial statement and tax return costs also increased.

It is reasonable to conclude that average costs did increase and some of that is permanent. The reasons for the increase in costs are covered in the discussion below.

Some caveats on cost

However:

- many respondents reported they didn't know or were unsure of the fees.
- some reported additional hours spent.
- others, despite reporting higher costs, provided no data to support that.
- others that they were unable to charge for the additional compliance costs.
- some of the respondents disclosed information when not required.

These suggest the change in costs may be both under and overstated.

Other matters from the survey

All trusts prepared financial statements for 2023 (compared to 25% and 22% for 2021 and 2022) which may be a benefit of the disclosure rules.

Comments provided in the survey covered similar issues provided in the stakeholder engagement. Each set of responses supports the other. For example, the first-year collations costs are consistent with comments regarding trusts not holding all of the information requested and uncertainty regarding the application of some of the terms.

Summary

The survey supports the proposition that the trust disclosure rules have increased compliance costs. For those that reported fees and disclosed information, there was an increase in fees in the first year, which reduced in the second year but not by as much.

Discussion

The responses do not explicitly address why these problems have arisen. I consider there are a number of factors which explain these results.

Lack of acceptance of policy purpose and scepticism – no GTPP

New Zealand generally follows the generic tax policy process ("GTPP"). This allows consultation on both the policy ("is it a good idea?") and with its implementation ("how best to do the policy?"). (Consultation does not mean that objections to a policy are accepted but that those objections are heard, understood, taken into account and, if not accepted, rejected for good reason.)

By the time a policy is introduced by way of a bill to parliament, the policy, the reasons for it, and problems with implementation are generally known and understood. Applying GTPP can take time (generally a two-year minimum), but the tax response to COVID shows that it can be adapted to move much more quickly.

The trust disclosure rules were introduced with no GTPP and with a short time to implement. That Inland Revenue should have the ability to request information for trust tax policy purposes was not generally accepted.

This lack of acceptance was compounded by concerns that "policy purposes" was simply an excuse to apply a 39% tax rate to trustee taxable income. No wider policy purposes were seen to be possible or seen as valid reasons supporting the provision of information for policy purposes.

As it transpired, there is a view that the trust disclosure information was not in fact used to confirm the 39% 2023 Budget announcement. Parliament enacted the 39% rate (albeit modified) after a change of government. Although the Government's budget position has played a part, prior Inland Revenue advice to governments had noted the effect of a difference between the highest personal individual tax rate and the trustee rate. As well as generating some scepticism on the policy reasons, the enactment of a 39% rate is seen as no longer justifying the policy purpose of the rules.

(Note, however, Inland Revenue's discussion on changes to the 39% rate through the Select Committee process and also information on the effect of the 39% change is a relevant policy purpose.)

Inland Revenue's use of information for processing and enforcement purposes was not understood. The information requested was seen as more than required for Inland Revenue to administer trust taxation. This is addressed more fully in Part VI of my report.

Inland Revenue - Understanding trusts and time to implement

Trusts have been subjected to tax for many years, at least, explicitly, since the Land and Income Tax Act 1916. A comprehensive trust regime was introduced in 1988. Notwithstanding this, a policy purpose of the trust disclosure rules is to provide Inland Revenue an understanding of how trusts operate. This implies a less than full understanding prior to the rules being implemented.

This is likely the case because Inland Revenue's focus has been on assessing and collecting tax from trusts' activity. Activities and holdings which are not in the income tax base have therefore not been within Inland Revenue's understanding. This is also the case for activity of a trust which does not produce an income tax result (for example, non-taxable distributions are generally outside the tax base. However, they are not outside the social policy base. The disclosures have helped identify when those rules were not being applied).

The broader use and operation of trusts, which are affected by the trust disclosure rules, may not have been within the knowledge of Inland Revenue. Further, because of a limited prior understanding, information required may not actually meet the objectives and may have increased compliance costs.

However, now that Inland Revenue has a better understanding, any changes to the trust disclosure rules made to reflect that better understanding may add to compliance costs.

Accounting and record keeping standards

Trusts do not, unlike companies, have legislated accounting and record keeping standards. Trusts may have accounting requirements because of their profit or other specific activity. However, generally financial statements, when prepared, are special purpose accounts. The standards applied can therefore vary.

The Trusts Act 2019 imposes a general requirement to have accounting records - trustees make their own judgements on what is required to meet that standard. (Trustees and advisors (legal or accounting) may have their own "special purpose" standards they apply to their trusts.) Record keeping requirements for income tax purposes are to maintain records to support their income tax obligations.

This meant there was no obvious standard against which to determine financial disclosures to Inland Revenue. Inland Revenue does not appear to have had an explicit model of how trusts operate (including transactions, governance, record keeping and financial statements). (See Appendix 1, for my assumed model of how trusts operate and how information is produced. This model has not been tested.) This means that the trust disclosure requirements do not match how some/all trusts work. This, as well as creating compliance costs, also creates doubt that the information is either correct or useful for Inland Revenue's purposes.

An example is the requirement to split land and buildings. One could reasonably expect that land and buildings would be separately recognised by trusts so that asking for that information would not add to compliance costs. However, the stakeholder response states that this is not done by all trusts. The information requested does not align with existing information held by some trusts.

Available time for collaboration and consultation

The relatively immediate application of the trust disclosure rules meant there was a very short time to determine what (and why) information should be disclosed so that the requirements could be confirmed, and systems could be implemented. This meant there were limited consultation and collaboration opportunities. The resulting requirements are not aligned with how trustees and advisors operate, manage and report on trust activity.

Not all trusts are the same

An average can mask variety and complexity. A single disclosure standard may not be responsive to either simple or complex cases. In the simple case, it may overstate what is required to adequately inform Inland Revenue. In the complex case, it may not provide a sufficient level of detail. In both cases, compliance costs will arise.

Duplication

Inland Revenue did have some information from IR10s provided by trusts. The IR10 is strictly a Statistics New Zealand obligation so that it does not necessarily fully align with a trust's tax position. (There is uncertainty regarding the requirement to complete an IR10 – not all IR10s supplied may be required, some not supplied may be required, some may provide more information than required.) A large number of trusts provided both IR10 and disclosures. (Many of them provided no further financial information.)

Potentially, this duplication is not particularly costly, if systems are in place to easily provide the information in two formats. However, there is a psychic cost – "why does Inland Revenue need this twice"? This increases the additional costs actually incurred.

Trustees unable to enforce disclosure

Banks, financial institutions, PIEs, employers (etc) report information to Inland Revenue. The integrity of that information is supported by mandatory information provision rules and also penalty rates of tax for certain non-compliance (such as no declaration withholding tax rates). This information is used by Inland Revenue to match income with taxpayers.

Trustees are required to work in accordance with the trust deed. If a beneficiary is entitled, the trustees must facilitate the distribution to the beneficiary. They have no power to withhold distributions because of the lack of information provided by beneficiaries or settlors. Accordingly, beneficiaries, settlors and appointors could resist the provision of information creating costs and concern for trustees.

As the reason for requiring this information was not communicated, it adds to the psychic costs as well as the actual costs of compliance.

Uncertainty of what is sufficient to comply

Trusts allow use of trust property and provide trust property to beneficiaries – non-cash transactions. These are not necessarily reflected in the financial statements as a dollar amount. The disclosure rules allow "minor and incidental" settlements to be ignored and require valuations of other transactions. Compliance with the disclosure rules for these items can be complex and uncertain. Because "the" value is uncertain, this is a problem for trustees who are concerned to comply with the letter of the law.

As the value has no immediate direct consequence, unlike for example a transfer pricing valuation, if Inland Revenue had confirmed what it would accept as available methods and ranges of values, this may have reduced this compliance cost.

Impact of Trusts Act 2019

Compliance with GST is said to assist businesses with managing their businesses. The trust disclosure rules may have had a similar benefit.

However, the Trusts Act 2019 was used as an opportunity for many trustees and their advisors to consider whether trusts were meeting their objectives. It was also used as an education opportunity to ensure that trusts were operated in accordance with those standards.

This may have already raised operational standards so that the trust disclosure rules added nothing to the operating efficiency of trusts. (However, see the survey result for preparation of financial statements.)

Summary

These factors mean the trust disclosure rules were:

- not well accepted;
- regarded as intended to justify a trustee rate increase;
- not aligned with existing systems and processes;
- not supported by rules to facilitate the provision of personal information to trustees to allow compliance; and
- not a catalyst for improving the operations of trusts.

The rules also duplicated (some) information provided to Inland Revenue. Importantly, the purpose for specific information requirements was not obvious.

As a result, the trust disclosure rules are considered an unjustified imposition. This means that stakeholders have a strong view that the rules are unnecessary. Their expectation is that the post-implementation review will robustly question the continuation of the regime with a strong preference that the rules be repealed.

Recommendations from survey and stakeholder engagement

GTPP

GTPP helps with taxpayer understanding of the policy and with engendering trust in the resulting tax policy. (This is particularly the case if multi-partisan acceptance can be obtained.)

Consultation and collaboration help with ensuring standards reflect practice and, where practice does not meet the requirements of the policy, helps with determining the best way to achieve the objective.

Both help Inland Revenue with confirming why the policy and why particular aspects are required. In this case, following GTPP would have helped confirm how trusts are used and operate. (As it turned out, the disclosures and engagement on the 39% trustee rate helped improve Inland Revenue's understanding.)

The lack of GTPP for the trust disclosure rules has added to compliance costs and therefore challenges to whether these costs are justified by the benefits, which are themselves unseen.

GTPP with time to consult and collaborate both on policy and implementation is required for optimal policy development. If GTPP is not undertaken, the decision to make a change without it should be made with a recognition that it carries risk for the success of the policy.

Other recommendations

My other recommendations are:

- Consider whether the Order in Council can be amended to further align requirements with practice.
- Consider whether parties to a trust can be obliged to provide information to trustees and whether non-declaration rates can be applied to distributions.
- Consider what potential tax policies may justify a policy purpose for trust information which is not directly relevant to the current calculation of trustee, beneficiary income and social policy credits. For example:

- the land and building split of values to support a depreciation deduction policy for buildings[3];
- PIE balances for PIE rate (increases or decreases) policy changes;
- separate income earning and non-income earning asset value disclosures for a capital gains tax policy.

I do not recommend the implementation of any of these policies. I use them to illustrate that such policy changes can be usefully and better considered with good information provided by the trust disclosures. The policies have not been tested with taxpayers or others. It is important that GTPP is applied to them before they proceed.

[3] This change has already been made. I understand there was consultation on the options and consideration of the trade-offs before the decision to proceed.

VI - INLAND REVENUE'S REPORT

Reviewing Inland Revenue's report prompts further observations and comment (which may also be addressed in Part V).

Trust disclosure rules' purpose

Stakeholder responses imply that the reason for the trust disclosure rules is the alignment of the trustee with the 39% personal tax rate. (Particularly, the feedback is the rules are no longer required.)

Although the purposes can be read more widely, particularly with respect to compliance, that may have been the immediate reason. However, the purpose of the rules does not need to be so limited for the future. Experience with the trust disclosure rules suggest an updated purpose for assessment of the regime is required.

In short,

- its primary purpose is for administration, processing and enforcement, by Inland Revenue; and
- to inform policy issues including confirming the appropriateness of existing policy as well as possible changes. These policy issues are not limited to trust taxation issues as trusts can affect personal taxation and also trusts can be affected by specific tax rules.
- These two purposes support a purpose of Inland Revenue gaining further understanding of trusts and their use which in turn should support the two other purposes.

This focuses solely on taxation purposes. I make some observations on NZ Inc purposes below.

Responses to stakeholder feedback and consideration of reasons for information requests

One reason for enacting section 59BA is the uncertainty regarding whether the Commissioner could or should direct resources to gathering the information and whether the Commissioner had the power to do so if that was considered desirable. The section removes those uncertainties. It has as a matter of fact provided information to Inland Revenue.

Inland Revenue's post-implementation review therefore is able to consider what use and effect that information can have for its functions.

I group the reasons advanced by Inland Revenue for requesting information as:

- administration being processing (in the sense of routine business as usual processing of returns, collecting payment and considering assessments) and enforcement; and
- policy, current and future.

These purposes, broadly, are for tax administration focused on the integrity of the tax system.

Processing - Matching

Matching facilitates administration. An IRD number facilitates matching. However, an IRD number alone may be insufficient to confirm the identity of the taxpayer. Additional information is required as a result. This includes date of birth etc. I assume that much of this information is (or should be) available to trustees to be able to operate the trust. However, an IRD number is unlikely to have been collected and information for historical settlors and appointors may have been lost.

Enforcement

For a complying trust, a simple view says that all that is required is beneficiary income and IRD number. However, for example, social policy rules go more broadly. Non-taxable distributions are also included as income. Further, trusts may not treat gains as taxable when they are taxable or deduct losses when they are deductible. Note also compliance with the minor beneficiary rule and distributions to tax exempt beneficiaries as enforcement issues.

Current policy

As I note at the outset, trusts are widely used for a variety of purposes. There are specific tax rules which are different from other vehicles used to carry out income earning activities.

The health and integrity of the system requires that the effect of the trust regime is monitored so that its continued appropriateness is considered.

The trust disclosure rules and the post-implementation review raise a number of policy issues for current law. (These are raised despite IR’s scope excluding how trusts are taxed. I consider that the way trusts are taxed is one explanation for the cost of complying with the disclosure rules. Reviewing how trusts are taxed may have consequential benefits for trust disclosure compliance as it may provide simpler thresholds as well as removing the need for some disclosures.)

Breadth of trust regime

The breadth of the settlor regime is due to concerns regarding nominal settlements hiding actual/economic settlors. A foreign trust, settled by a New Zealand resident, could accumulate and distribute income without New Zealand tax applying. A broad definition of settlor was required to ensure that arrangements which had the effect of settling funds on a trust were treated as settlements. Non-cash distributions also have an effect and specific rules are required for the same reason – to determine whether income is being distributed to beneficiaries.

Non-cash distributions

Non-cash distributions are not taxable if made from a complying trust (but are if made by non-complying trusts). Whether these are funded from accumulated trustee income or capital gains or settlements, no further tax is payable so there appears to be no enforcement rationale for collecting the information.

However, fringe benefits tax was introduced because employee non-cash remuneration was outside the tax net. It is conceivable that the treatment of non-cash distributions could be the subject of policy consideration (without prejudging what the outcome would be – that consideration could well preserve current treatment).

Settlor and appointor

The feedback also raises questions regarding the definition of settlor and appointor. The income tax definition of settlor is broader than the one which might be applied by trustees. An appointor is not a concept often applied by trustees.

Reviewing the settlor definition – is it still required to be as broad as it is? Can it be simplified so that a simpler test can be applied for most complying trusts? - should be on the policy agenda. Similar considerations apply for appointors.

Trust characterisation – non-income generating assets

The trust rules effectively view trusts as separate "entities" from settlors and beneficiaries. The standard treatment of a separate entity is that transactions between the entity and other parties have to be considered for their tax effects.

For a company, non-arm's length dealing with shareholders will be treated as a dividend. It is not obvious that the use of property by beneficiaries requires the same consideration.

For example, if a person owns a holiday home, the tax system concern is only that expenditure is not deducted. (In some cases, a taxable sale may arise but that is not the general case.) If however that holiday home is owned by a trust, the asset and associated expenditure is in the "entity" base (albeit that no taxable income arises).

This has consequences for the complexity of compliance with the disclosure rules. Non-tax base assets and expenses have to, at least, be considered for disclosure.

Reviewing the characterisation of trusts, confirming the approach and or restating the policy in clear terms, could lead to amendments which help with trust disclosure rules compliance.

39% rate

At a more immediate level, the trust rules have changed with the enactment of the 39% tax rate. Whether the results are as expected and consistent with the policy should be the subject of consideration.

Future policy

Future policy, by definition, is less certain. This means this justification for requesting information requires explicit consideration of the trade-offs for collecting or not the information. I provide some examples to illustrate policy changes and how information may help.

Capital gains

Information on capital gains made by trusts provide an estimate of the fiscal benefit of a capital gains tax. (The last Tax Working Group noted the paucity of information available to them to make reasonable estimates.)

However, this information may never be used (as a decision to introduce a capital gains tax may never be made). This means the probability of a future policy could be included in the judgement of whether to request the information. Also in the mix is, if the information is not requested, how reliable might an estimate be in the future and/or how quickly can the information be provided when a decision is made to consider a capital gains tax.

Two related observations. Inland Revenue does not collect information on capital/non-deductible losses as a negative cannot be provided. This means the data is skewed and does not provide full evidence. Disclosed capital gains provides information for enforcement action – are the gains actually non-taxable?

Building depreciation

Building depreciation[4] has been a source of debate. It seems reasonably clear that depreciation does occur and there is a good policy reason for deductions to be allowed. (For example, Inland Revenue's last Long-term Insights Briefing concluded that New Zealand's higher cost of capital is in part because of the difference between economic income (after depreciation) and taxable income (without depreciation).) Despite that policy result, depreciation is not allowed (for fiscal reasons). It is likely the policy will be revisited.

[4] Note the amendment already made to require disclosure of a combined land and building amount.

Information on buildings would be useful for considering that policy. Given that, in the absence of building information, the fiscal cost would need to be estimated, the questions to consider when confirming whether annual disclosures are required are:

- how reliable would that estimate be?
- how costly and quickly could that estimate be provided?
- Would that information need to be sourced from trusts as a one-off information disclosure?

Non-income earning assets

Information on non-taxable income earning assets do not generally assist in administration and enforcement. This suggests there is no reason for collecting this information.

However, there is a risk that expenditure related to the non-taxable income earning asset is being deducted or, in fact, the asset does produce taxable income (for example, some land and buildings may generate taxable gains because of specific land rules). There is a reason to have information disclosed to Inland Revenue.

Further, information on these assets may be useful for future policy (for example, for exemptions from a capital gains tax or wealth tax). As with capital gains information, there is a weighing up exercise of the likelihood of it being used, the cost of complying, and the effect of allowing reduced reporting so that less information is collected.

Historical information and understanding of trusts

It is reasonable to ask why Inland Revenue did not use the information already provided (by way of tax returns and other forms) prior to 2022 to derive insights. Some insights were previously available, but it seems fair to say that the role of trusts, broader perspectives on trust compliance, and trust income tax policy settings were not a focus for Inland Revenue. (Specific technical issues and compliance were of course in focus at various times.)

The trust disclosure rules have brought an Inland Revenue focus to trusts and can be validly said to raise questions of compliance and policy which had not been considered by Inland Revenue.

NZ Inc

The trust disclosure reports disclaim Inland Revenue's role as a registrar of trusts. It does not have that formal role. However, the trust disclosure rules make inland Revenue, at least, a de facto registrar of trusts. It does not have a complete register of trusts, but it records a substantial number of trusts and, as a result of the disclosure rules, a substantial amount of information.

These facts make the trust disclosure rules important for government as follows:

- It may mitigate the need for a formal register to comply with the Anti-Money Laundering and Counter-terrorism commitments. A formal register will have compliance costs which may be more or less than those associated with the trust disclosure rules but there will be some.
- It provides an opportunity to rationalise the provision of information to government. This is likely to require collaboration of Inland Revenue with Statistics NZ. Any rationalisation of information collection is however unlikely to be a short-term solution to reducing compliance costs.

By contrast, the feedback illustrates that the lack of a standard for trust financial reporting is a cause of compliance costs. This may no longer be needed as the OIC has established a standard. However, relevant agencies (the XRB) should consider whether appropriate standards can be established to make financial reporting easier. In turn, this would allow Inland Revenue to consider how much of the disclosures can be aligned with what trusts actually do.

2023 data

Inland Revenue's report is focused on tax insights. (The report may not contain all the tax insights available from the data and may not provide the right explanation.)

In Inland Revenue's report

Inland Revenue states the disclosures have helped it better understand trusts which was used for the 39% trustee rate change. Assistance from taxpayers and their advisors through consultation on the trust rate change also, in my view, helped. This supports my recommendation that GTPP is followed.

In Annex

The Annex[5] reports data from the 2023 disclosures. The disclosures and my comments (which may duplicate those elsewhere) are:

- Not all trusts are covered by the rules and, it appears, not all comply while some not required to comply have done so. There will be implications for guidance and compliance and also for the policy. These are not discussed but, for example, Inland Revenue could use the information it holds to encourage trusts to file non-active declarations and/or test whether the disclosures are actually required.
- Simplified reporting trusts are a majority of trusts. This may help with establishing appropriate thresholds for changes to reporting requirements. However, there is a trade-off between lower costs from not having to comply and reduced information. (I note that information from a single trust may be of marginal use and pose little risk to

[5] My report is based on a draft of 8 December 2024.

the tax system but the information from all simplified reporting trusts, in the aggregate, would be useful.) Further, thresholds also have compliance costs if determining whether the threshold has been breached is not simple, obvious or automatic.

- There are peaks in the establishment of trusts as there are with companies. The report signals events which may correlate (but does not prove) with increases and decreases in trust establishment. This suggests further work could be done to understand causation.
- Assets are weighted to land and buildings. Comparing the type of assets disclosed with income returned may help understand the proportion of trusts that have non-income earning assets and therefore with understanding the use of trusts.
- Untaxed realised gains have decreased but the proportion derived by trusts is materially the same. This suggests that changes in the market may have had an impact. Also, higher distributions in the prior year (which may have necessitated realisations) may have reduced the need for trusts to have (further) liquid assets. (See also observation on capital losses.)
- Loans to and from beneficiaries have increased. At a gross, all, trust level, loans to trusts can be seen as funding loans to beneficiaries. Is this what is happening or are loans to trusts funding asset acquisitions? Does the aggregate hide some insights? E.g. are all trusts doing both or only some? What impact does this have on the presumption that trustee income, and therefore a lower tax rate, is funding beneficiaries?
- Trustee and beneficiary income have both increased but beneficiary income not to the same extent. This suggests that more is being retained by the trust and distributed as non-taxable distributions.
- 39% personal rate beneficiaries still receive beneficiary income. This implies, as taxpayers and advisors have told Inland Revenue, there are non-tax reasons for the trust. By contrast tax reasons can be seen in the reduction of income allocated.
- However, the information for other income and tax rate bands is not clearly disclosed. Of particular interest is the total of non-taxable distributions received by those on less than 33% who would have been over-taxed (assuming the distribution is sourced from prior year trustee income). The Distributions to Beneficiaries table does not show the allocation of $16.5b of distributions to beneficiaries by taxable income level.

Some broader potential insights have not been made available. For example, trustee income could be allocated to settlors and beneficiaries, using some assumptions on what that allocation might actually be, to illustrate which tax rate taxpayers have benefitted or been penalised by the trusts' tax regime.

Various assumptions for that allocation could be used to allocate trustee taxable income to beneficiaries. For example:

- if a settlor is also a beneficiary, the person might reasonably be allocated trustee income;

- if the settlor is deceased, then only beneficiaries would be allocated income;
- recipients of non-taxable distributions could be treated as receiving prior year trustee taxable income (on a last in, first out assumption).

Different allocation assumptions such as these would provide (different) pictures of the tax rate benefit or detriment for the use of trusts. These pictures will not be the actual result because the actual, future, beneficiaries may not match the assumptions. This would, however, provide some information on the use of trusts and, in the future, the effect of the 39% trustee rate and on whether it over-taxes as well as correctly taxing.

Non-tax insights

From my perspective, consistent with my view that the trust disclosure rules provide a wider set of data than previously available, they raise questions of wider policy matters.

For example, the data presents beneficiary income by age of the recipient. It shows beneficiaries are the young and older persons.

From a non-tax perspective, distributions to older persons suggests that beneficiaries access trust funds as they age. That inference is consistent with trusts being used for superannuation savings. (This is consistent with those beneficiaries, due to their age, having had less benefit from KiwiSaver.) Assuming this is a valid conclusion, it has some impact on savings policy. (See for example, a recent run of articles by Andrew Coleman on interest.co.nz.[6]) Consideration of savings policy, which does not consider the broader savings perspective (i.e. how savings are made across all vehicles), may not produce desired results.

The availability of data which can be used for non-tax purposes does provide some support for the regime. This may not be accepted by stakeholders who have a view that the data should only be useful for tax administration purposes. That approach weights these other benefits at zero, I give it a higher weighting.

Future data analysis and reporting

The 2022 and 2023 disclosure reports provide useful information. Inland Revenue should consider wider and broader questions being asked of the information provided, carry out relevant research as well as enforcement, and should annually publish the results.

[6] For example, see https://www.interest.co.nz/public-policy/129317/andrew-coleman-argues-its-time-nz-again-considered-social-security-taxes-we.

PART VII- CONTINUE OR REPEAL?

Continuation

My view is that the regime should continue for now. My reasons include:

- To provide better confidence in trustees and beneficiaries complying with their tax obligations and to assist Inland Revenue in carrying out its processing and enforcement functions.
- To consider policy issues particularly because of the change to the trustee rate. The information provided should assist in the future consideration of the effect and appropriateness of the trust regime's outcomes. There are also a number of other potential policy reasons for supporting the rules. They are as above.
- A legislated requirement removes uncertainty regarding whether the information can be required.
- Broader NZ Inc objectives (including AML/Counter-Financing Terrorism) may be better achieved (from a compliance cost perspective) through the trust disclosure rules.

Modifications

I am aware that this may be seen as too heavily discounting the compliance costs of the regime, but I consider that these costs should be able to be further mitigated (through the series of recommendations, in my and Inland Revenue's reports, on possible changes). The objective of those changes should be to reduce compliance costs while not increasing the risk that the information received is insufficient for the desired purpose.

Information can be divided into – that already produced and maintained by trusts and those which have to be separately obtained. As well as confirming the information is required, any changes to the information requests should bear in mind:

- Can the information be aligned with what is produced by trusts?
- Information which must be generated should be necessary.

Further review

This may be a short-term continuation. If Inland Revenue has gained a better understanding of trusts, it should be able to improve its assessment of risks generated by trusts and how it processes trusts so it may not need as comprehensive a dataset.

The regime should be regularly reviewed to confirm the purpose of the trust disclosure rules remain desirable and are being achieved.

Next steps

Section 59BA was required because it was uncertain that the Commissioner could or should direct resources to gathering the information and whether the Commissioner had the power to do so if that was considered desirable. On enactment, there were stated purposes for the Commissioner's collection of the information.

The Inland Revenue report justifies information requests based on the results of the effect of the trust disclosure rules. These justifications may not have been available at the time of enactment. (At least explicitly and publicly, as these justifications were not made available to taxpayers and advisors.)

Further, the link of the regime's purpose to the 39% personal tax rate and the trustee rate, now has a different emphasis - is the 39% rate achieving its purpose?

Inland Revenue's newly stated purposes and justifications may not satisfy taxpayers and advisors. The risk is that continuing with the trust disclosure rules may still not be accepted because the review is not seen as sufficiently robust.

In my view, the post-implementation report and my report provides a basis for consultation with taxpayers and advisors so that their perspective can be taken into account in a final decision. This would allow for a form of GTPP, albeit after implementation, for the trust disclosure rules.

However, stakeholders should be encouraged to consider the costs and benefits of the regime with the current perspective as described in the report rather than their historical perception.

I close this section with my opening proposition – that I may not like a possible tax policy response to the information provided is not a reason to resist the provision of that information. Indeed, the information may provide support for an alternative which I do like.

APPENDIX 1: TRUST INFORMATION MODEL

	Trust information model	***Comments and observations***
Pre-dislcosure regime	**Trust Activities**	
	Business / "Non Business" / Trust (Trustee, settlor, beneficiares)	Each activity may have associated assets, liabilties, income and expenses and may overlap/interact.
	Accounting and trust systems and processes	These can be manual or digital. Some systems and processes may populate tax required disclosures.
	Produce	
	Accounting and trust records	These must satisfy Trust Act obligations so trustees considered they did. There is no general standard, the records required are determined for the specific trust. These "interact"/"affect" trust activity.
	Used to produce	
	Tax calculations, returns and forms	Pre-regime accounting and trust records need to be sufficient to satisfy these obligations. To extent tax rules impose specific obligations they add to the minimum required to satisfy Trust Act obligations.
	IR 10 of financial statements provided if IR10 not completed	IR10 only completed if in business, some confusion over what is covered.
	Trust disclosure rules require	
Disclosure regime	Financial statements	Additional disclosures per OIC unless exempt and/or IR10 compliance already covered
	Settlor information	Settlor information (including IRD numbers) to be gathered
	Beneficiary information	Beneficiary information (including IRD numbers) to be gathered
	Appointor information	Appointor information (inclduing IRD numbers) to be gathered
	Used to prepare IR returns and forms	
	IR 6	Previously completed, additional financial information
	IR6B	Additional beneficiary information
	IR6F	Only required for not widely held superannuation funds
	IR6P	Additional appointor information
	IR6S	Additional settlor information
	IR 10	Still completed by some and for many the same financial information.