

Trust disclosures: Post-implementation review

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Executive summary

In 2024, Inland Revenue undertook a post-implementation review of the trust disclosure rules. The objective of this review was to determine whether changes should be made to improve future disclosures and reduce compliance costs. The full range of options includes repealing the regime, keeping it unchanged, and maintaining the regime with targeted changes.

We undertook interviews with 13 stakeholders representing trustees, tax agents, tax advisors and accountants, and software providers. Broadly, stakeholders considered that the trust disclosure rules have resulted in unnecessary compliance costs, particularly in the first year. However, there were a wide range of different views on specific issues with the regime.

We also surveyed 17,000 trustees on compliance costs in recent years. The 1,200 responses also show a wide range of situations, with many responses indicating that costs have increased, decreased, or remained largely unchanged.

The responses from stakeholders and survey respondents reflect that trusts are used in a wide variety of contexts in New Zealand, and their circumstances and issues are not easily generalised to all domestic trusts. To respond to this, we have attempted to strike a balance between determining what information should be disclosed by all trusts versus pieces of information that are only relevant for high-risk trusts.

Recommendations

We recommend maintaining the disclosure regime, while making changes to improve future disclosures and reduce compliance costs. Given the disclosure rules were introduced prior to the 39% trustee tax rate, it is important that the purpose of the disclosure rules is restated. The rules are important to:

- support the Commissioner of Inland Revenue's ability to assess compliance with tax rules and develop tax policy, and
- assist the Commissioner in understanding and monitoring the use of structures and entities by trustees.

Our recommended changes fall into the following categories:

- **Reducing subjectivity:** changes could make it simpler to comply by reducing the number of subjective tests in the rules.
- **Reducing granularity:** removing unnecessary breakdowns of disclosures.

- **Improving the taxpayer experiences:** improving guidance, forms and myIR.

Independent report

To help provide another perspective on the disclosure rules, an independent report has been prepared by John Cantin, Cantin Consulting. The independent report can be found here:

[Independent review of the disclosure rules](#)

2023 disclosures annex

This document contains a high-level summary of insights from the 2023 disclosures. More detail is provided in the standalone annex:

[Annex of 2023 data](#)

Background

Increased disclosure requirements for domestic trusts

The [Taxation \(Income Tax Rate and Other Amendments\) Act 2020](#) was enacted in December 2020. In addition to introducing a new top tax rate of 39% on personal income over \$180,000 per annum, this Act also introduced increased disclosure requirements for trustees for the 2021–22 and later income years.

The increased disclosure requirements for trustees were introduced for two purposes, to:

- support the Commissioner of Inland Revenue's ability to assess compliance with the new 39% personal tax rate, and
- assist the Commissioner in understanding and monitoring the use of structures and entities by trustees.

The legislative provisions for the disclosure requirements are set out in [sections 59BA](#) and [59BAB](#) of the Tax Administration Act 1994 (TAA).

Section 59BA

Section 59BA provides that a trustee of a trust who derives assessable income for a tax year must prepare financial statements and disclose details of:

- settlements
- settlors
- distributions
- beneficiaries
- appointers (persons having a power under the trust to appoint or dismiss a trustee, to add or remove a beneficiary, or to amend the trust deed), and
- other information required by the Commissioner.

Certain classes of trusts are excluded from these disclosure requirements under section 59BA(3), including:

- non-active trusts
- foreign trusts
- trustees of a trust incorporated as a board under the Charitable Trusts Act 1957, and

- trustees eligible to become Māori authorities.

Estates are not required to comply with the disclosure requirements. The mere fact a person has died, and an executor or administrator has been appointed to manage their estate, does not give rise to a trust relationship.

Section 59BAB

Section 59BAB provides the Commissioner with the power to retrospectively request information relating to a trust for a period beginning after the end of the 2013–14 income year and ending before the beginning of the 2020–21 income year. The information requested must have been required to be disclosed under section 59BA if the relevant period began after the end of the 2020–21 income year.

Subsequent amendments

Table 1: Trust disclosure legislative amendments

	Description
2021 amendments	<p>Following enactment of the disclosure requirements in December 2020, Inland Revenue undertook targeted consultation on the exemptions from the disclosure requirements in section 59BA(3) of the TAA. The outcome of this consultation was that amendments were included in the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021 to exclude the following classes of trusts from the disclosure requirements:</p> <ul style="list-style-type: none"> ▪ charitable trusts registered under the Charities Act 2005 ▪ widely-held superannuation funds ▪ exempt employee share schemes ▪ debt funding special purpose vehicles, and ▪ lines trusts established under the Energy Companies Act 1992. <p>These amendments were enacted in March 2021 with effect for the 2020–21 and later income years.</p>
Order in Council	<p>The Tax Administration (Financial Statements—Domestic Trusts) Order 2022 was made in March 2022 setting minimum requirements for the preparation of financial statements by trustees required to comply with section 59BA.</p>

	Description
2022 amendments	<p>Amendments were included in the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 to clarify that distributions, other than of money, that are minor and incidental to the activities of the trust are not required to be disclosed.</p> <p>The amendments were enacted in March 2022 with effect for the 2020–21 and later income years.</p>
2023 amendments	<p>Amendments were included in the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 to expand the eligibility of the non-active trust exclusion from filing requirements in section 43B of the TAA. In particular, the amendments:</p> <ul style="list-style-type: none"> ▪ no longer require a person to provide a declaration to the Commissioner that the trust or estate is non-active if the trust or estate does not have an IRD number ▪ increase allowable administration costs from \$200 to \$1,500 ▪ extend the income exemption from bank interest to reportable income ▪ increase the income exemption threshold from \$200 to \$1,000 of assessable reportable income, and ▪ ensure that testamentary trusts with small amounts of income are not required to file a tax return so that the administrative costs associated with filing returns do not unduly diminish the value of the trust. <p>These changes were enacted in March 2023 with effect for the 2020–21 and later income years.</p>

Post-implementation review

Inland Revenue undertook a post-implementation review of the trust disclosures in 2024.

The trust disclosure rules were enacted under urgency in December 2020, without public consultation. Although Inland Revenue has undertaken numerous consultations since the rules were introduced to refine or improve specific aspects of the regime, this has been the first opportunity to holistically review the rules.

Objective

The objective of the post-implementation review of the trust disclosure rules is to determine whether changes can be made to improve future disclosures or reduce compliance costs.

This includes:

- a repeal of the disclosure requirements in full
- making no changes to the disclosure requirements, or
- keeping the regime while making some improvements.

Scope

The scope of the post-implementation review includes:

- the legislation in section 59BA of the TAA
- the Order in Council setting minimum standards for the preparation of financial statements for domestic trusts
- [IR6](#): *Income tax return: Estates or trust*, and associated attachments:
 - [IR6B](#): *Estate or trust beneficiary details*
 - [IR6S](#): *Trust settlor details*
 - [IR6P](#): *Trust power of appointment (POA) details*
 - [IR6F](#): *Trust financial disclosure for superannuation funds that are not widely held*, and
- [IR6G](#): *Estate or trust return guide*.

Generally, unless otherwise specified, the term **trust disclosure rules** (or similar terms such as **disclosure requirements**) is used in this report to refer to all the above aspects, not just the legislation itself.

Matters out of scope

The following matters are outside the scope of the review:

- Matters relating to tax policy settings (such as how trusts are taxed), except to the extent that they directly relate to the trust disclosure rules.

For example, the exclusions from the trust disclosure rules in section 59BA(3) of the TAA are dependent on other tax policy settings, such as the non-active trust definition. Changes to these settings would be within scope of the review to the extent that it would affect the impact, effectiveness, or compliance costs of the trust disclosure rules.

- Other tax returns and forms, including the [IR10: Financial statements summary](#).
- The foreign trust disclosure regime.

Independent report

Inland Revenue contracted John Cantin, Cantin Consulting, to produce a report to provide an independent perspective on the analysis and conclusions of the review. John Cantin was consulted throughout the post-implementation review and development of this report. John's independent report can be found at [\[link\]](#).

We would like to thank John for his time and contributions throughout the post-implementation review.

Inland Revenue is solely responsible for the analysis and conclusions in this report.

Part 1: Qualitative interview feedback

In May and June 2024, Inland Revenue undertook interviews with 13 stakeholder groups representing trustees, tax agents, accountants, and tax advisers. We sought feedback to:

- better understand stakeholder experiences with the trust disclosure rules, and
- help inform whether changes could be made to improve future disclosures and reduce compliance costs.

The following sections contain high-level summaries of the anecdotal feedback received from stakeholders, along with Inland Revenue's perspective on aspects of the rules discussed with stakeholders.

General feedback

Qualitative interview feedback

Most stakeholders said that Inland Revenue needs to communicate the purpose and value of the information required. They highlighted the compliance costs involved in meeting the increased disclosure requirements, and that it is not necessarily clear what the information is being used for. Many also emphasised that the information requirements should be restricted to what is needed for compliance and policy purposes.

Some stakeholders said that Inland Revenue should narrow the application of the rules and questioned the relevance to smaller and less complex trusts. One stakeholder suggested exempting complying trusts from the rules, and some suggested targeting the areas of concern through a risk-based approach.

A few stakeholders also raised concerns about the reliability of the data provided. One stakeholder suggested that there is likely to be inconsistency in how tax agents disclose information, and another said that some taxpayers are likely to take the requirements more seriously than others.

Inland Revenue comment

Collection of information

As noted earlier, since the enactment of the trust disclosure rules, Inland Revenue has developed an information collection framework to help guide how and when information should be collected.

Why do trusts need to disclose information?

Different tax rules apply to trustees, compared with other persons and entities. Most domestic trusts are discretionary trusts, which means that, generally, the trustees have discretion over the timing, size, and allocation of distributions to beneficiaries. Most trustees also have the power to add or remove beneficiaries.

Unlike companies, trustees can stream income to different beneficiaries and distribute capital (income previously taxed at the trustee rate as well as capital gains) with no further tax impost.

It is important to ensure these settings continue to be appropriate and are not misused.

The following sections outline the benefits to Inland Revenue of the different trust disclosure requirements and includes examples of how the disclosures have helped Inland Revenue better understand trusts.

Risk-based approach

Broadly, we support applying a risk-based approach to the collection of information. Generally, “small trusts” pose a smaller risk to the tax system. Although exempting small trusts (however defined) would result in significant volumes of information no longer being disclosed, it is likely that the foregone total value of that information would be much less. In other words, the transactions and details disclosed by small trusts relate to smaller transactions. In general terms, most of the tax risk sits with the more complex and larger trusts.

However, the timing of any potential changes to the disclosure requirements for “small trusts” is important. The trustee tax rate was increased for the 2024–25 and later income years. Disclosure data for the 2024–25 year will be important for monitoring the effectiveness of the 39% rate and identifying non-compliance, particularly in relation to the modifications to the 39% rate, such as the \$10,000 de minimis. Understanding behavioural changes both before and after a rate change are equally important.

Therefore, we recommend deferring consideration of whether “small trusts” should have reduced disclosure requirements until after the first year of the 39% trustee tax rate returns (the 2024–25 year) have been analysed. This analysis will not be undertaken until mid-2026 at the earliest because most trustees have extensions of time to file their tax returns, meaning that most returns for the 2024–25 year will not be filed until 31 March 2026.

Recommendation R1: Consideration of whether “small trusts” should be exempt from, or have reduced requirements under, the trust disclosure rules should be deferred until 2026 (after the 2024–25 returns have been analysed).

First year of disclosures

Prior to the 2021 tax year, Inland Revenue held limited information on trusts aside from declarations of taxable income. Upon registration, trustees were required to provide a copy of the trust deed (if documented) and to identify at least one trustee. They were not required to identify any beneficiaries of the trust, except when taxable income was allocated to them, and even in those instances the information provided to Inland Revenue was often incomplete.

The introduction of the disclosure rules meant that many trustees needed to establish new processes to meet the disclosure obligations, including the collection of new non-financial information about beneficiaries, settlors and appointers.

Qualitative interview feedback

Most stakeholders considered that compliance was hardest in the first year. Gathering information to comply with the disclosure requirements was difficult because some information had never been collected before (such as dates of birth for beneficiaries). Some also emphasised that these costs have now been incurred, and that Inland Revenue should be conscious of imposing further one-off costs with any changes to the rules.

Many said compliance was easier in the second year and is expected to be in future years. Trustees have already collected non-financial information such as birth dates and IRD numbers for existing beneficiaries, settlors and appointers, and these will only need to be collected for new beneficiaries, settlors or appointers.

A few stakeholders disagreed that the first year was the hardest and considered that there were high ongoing costs.

Due to the timing of the enactment of the legislation and the first year of the disclosures, some stakeholders noted that there was an element of retrospectivity. The specific details of the disclosure requirements were finalised during the tax year they applied to – this meant that trustees needed to collate information about the tax year after it had ended. This also led to compressed timeframes for trustees, accountants, tax agents, and software providers

to implement new (or change existing) systems and processes under compressed timeframes.

Inland Revenue comment

We acknowledge that the introduction of the trust disclosure rules has resulted in additional compliance costs, particularly in the first year as new processes were established. The enactment of the disclosure rules under urgency and without public consultation affected the quality of the legislation.

We note that Inland Revenue's information collection framework (finalised since the trust disclosure rules were introduced) includes consideration of compliance costs, the impact of collecting the information, and the carrying out of consultation before undertaking any information collection.

Recommendation R2: The development of any changes to the trust disclosure rules should take into account whether the change will result in taxpayers incurring additional one-off compliance costs.

Financial statements: Disclosure of information

Context

The [IR6](#) tax return requires trustees to disclose financial information.

Statement of profit or loss

The return requires trustees to disclose the trust's net profit/loss before tax and tax adjustments for the year.

- Q34A: Net profit/loss before tax
- Q34B: Tax adjustments

Statement of financial position

Assets

- Q35A: Associated persons financial arrangements
- Q35B and Q35C: Land
- Q35D and Q35E: Buildings

Liabilities

- Q36A: Associated persons financial arrangements
- Q26B: Beneficiary current accounts
- Q36C: Other liabilities

- Q35F and Q35G: Shares/ownership interests
 - Q35H: Beneficiary current accounts
 - Q35I: Other assets
 - Q35J: Total assets
 - Q36D: Total liabilities
- Accumulated trust funds**
- Q37A: Accumulated trust funds
- Other financial metrics**
- Q38A: Untaxed gains
 - Q38B: Amounts withdrawn by beneficiaries during the year

Qualitative interview feedback

Most stakeholders said that disclosing information is easier if it is readily available in the financial statements. They said that the requirements should be as consistent with what people are currently preparing as possible because there are compliance costs associated with finding additional information.

Some stakeholders highlighted the duplication of information across the disclosures and the [IR10](#) form (which is required from taxpayers who derive business income) as a source of additional and unnecessary compliance costs.

Some had difficulty with the terminology used in the disclosure requirements. For example, some raised that it is unclear what a “beneficiary current account” is and had issues identifying them.

Some stakeholders that generally represent larger/complex trusts raised complex examples of when the treatment is unclear (for example, how untaxed realised gains in share portfolio holdings should be disclosed). In contrast, a few stakeholders that generally represent small and medium enterprises (SMEs)/family trusts considered that completing the financial disclosures was straightforward.

Many stakeholders questioned the relevance of the asset breakdowns required, such as splitting out land and buildings. They asked whether this level of detail is necessary and indicated that it is a source of additional compliance costs.

Inland Revenue comment

In particular, the financial data has given additional insights that have been used to design tax policy and to enhance tax compliance.

Duplication between IR10 and IR6 forms

We acknowledge that there is currently some duplication between the [IR10](#) and [IR6](#) forms. The [IR10](#) is used by more companies than trusts, and any changes would need to be carefully considered. Changes to the [IR10](#) are outside the scope of this review.

The disclosure of financial information in the [IR6](#) could be optional if a trust has also filed an [IR10](#), however unlike the [IR6](#), the [IR10](#) only requires the disclosure of business assets (and other business financial information). However, we acknowledge that this distinction may not be obvious to taxpayers.

We recommend undertaking further work, including public consultation, to determine how best to reduce duplication between the [IR10](#) and [IR6](#) forms.

Terminology in guidance

We recommend that Inland Revenue reviews the trust disclosure guidance to ensure that the terminology is well understood and reflects how trusts are used.

Asset breakdown

The requirement to disclose assets broken down by land, buildings, shares/ownership interests and other assets was designed based on the [IR10](#) form. We opted for consistency to keep compliance costs low.

However, after further consultation we agree with stakeholders that the asset breakdown could be simplified. There is limited value in requiring trustees to separately identify land and buildings under current tax policy settings. There conceivably could be value in maintaining this split for future policy settings, however this is not a sufficient reason for requiring this breakdown.

The benefits of having a consistent approach to the [IR10](#) is outweighed by the impact on some trustees that hold land and buildings as a combined value. Trustees would ideally be able to disclose either a combined value for land and buildings or separate values for each. However, accommodating both approaches would add additional complexity to the trust tax return. On balance, we recommend simply requiring a combined value.

If a change is made to no longer require the separate disclosure of land and buildings, a corresponding change should also be made to combine the requirement to disclose settlements of land and buildings for consistency.

Recommendation R3: Further work should be undertaken to reduce duplication between the [IR10](#) and [IR6](#) forms.

Recommendation R4: The terminology used in trust disclosure guidance should be reviewed to ensure it is well understood and reflects how trusts are used.

Recommendation R5: Trustees should not be required to separately disclose land and buildings (for both the financial information and the settlements on the trust).

Financial statements: Preparation of statements

Context

The [Tax Administration \(Financial Statements—Domestic Trusts\) Order 2022](#) requires trustees subject to the trust disclosure rules in section 59BA to prepare financial statements. These statements do not need to be provided to Inland Revenue, unless requested by the Commissioner.

The Order provides that a **simplified reporting trust** has reduced minimum standards for the preparation of financial statements. This does not affect the information that must be disclosed.

A trust is a simplified reporting trust if it has:

- less than \$100,000 assessable income
- less than \$100,000 deductible expenditure, and
- less than \$5 million total assets.

Qualitative interview feedback

Most stakeholders said that minimum standards are not helpful if financial statements are already being prepared for the trust. However, some stakeholders that generally represent SMEs/family trusts said that simplified reporting makes sense for simple structures and can be helpful if financial statements were not already being prepared.

Some stakeholders said that it can be easier to prepare statements to the highest level of detail for all their clients, rather than having a separate process for the simplified reporting

requirements. It is not worth preparing separate accounts for minimum standards that are not significantly lower.

Stakeholders had mixed views on the thresholds for simplified reporting trusts. Some considered the thresholds to be “reasonable”, whereas others considered the total asset test to be too low due to current property prices.

Inland Revenue comment

The information that trustees need to include in their financial statements is influenced by the financial disclosure requirements on the trust tax return. Therefore, although there may be a case to further reduce the minimum standards for simplified reporting trusts, we consider that this should be considered after determining the financial disclosure requirements for trustees.

It seems that the minimum standards are not useful (but also not harmful) for many trustees that are already preparing financial statements, and that it may be useful for trustees that are not already preparing financial statements. Therefore, we consider that there is not a strong case for changing the Order in Council at this stage.

Furthermore, given the inconsistent feedback from stakeholders, additional consultation would be required before considering changes to the Order in Council.

Recommendation R6: The thresholds for determining whether a trust is eligible for simplified reporting requirements in the Order in Council should not be amended at this stage.

Recommendation R7: The minimum standards in the Order in Council should not be amended at this stage.

Trust information: Distributions

Context

Prior to the trust disclosure regime, trustees were already required to disclose beneficiary income distributions. The trust disclosure rules expanded the [IR6B](#) return to also require trustees to disclose the following details about distributions to beneficiaries:

- Tick box for nil distributions
- Q27U: Opening balance
- Q27V: Accounting income and other distributions
- Q27W: Corpus
- Q27X: Capital
- Q27Y: Use of trust property for less than market value
- Q27Z: Distribution of trust assets
- Q27AA: Forgiveness of debt
- Q27AB: Amounts withdrawn from the trust during the year
- Q27AC: Closing balance

Non-cash distributions that are minor and incidental to the activities of the trust do not need to be disclosed.

Qualitative interview feedback

Some stakeholders highlighted non-cash distributions as a problem area because they can be difficult to value and cannot be tracked through bank accounts like cash distributions. One stakeholder said that it is not clear what is meant by “minor and incidental” non-cash distributions. Another suggested that a de minimis could be used to exclude minor amounts.

Some stakeholders said that recording the distributions a trust makes is onerous, particularly if it makes many or if the trust is historic. One also said that it can be difficult to determine which distributions are relevant to disclose. Another stakeholder suggested that aggregation could help, for example, simply requiring “distributions to tax-exempt entities”.

Inland Revenue comment

Distributions of non-cash distributions (Q27Y, Q27Z, Q27AA)

The disclosure of non-taxable distributions helps us understand who benefits from trusts. Generally, those who largely benefit from trusts are higher income earners, who

predominately receive income that has previously been taxed as trustee income or non-taxed gains from the trust, rather than beneficiary income allocations (Q27V).

However, we consider that the breakdown of non-cash distributions into use of trust property for less than market value, distribution of trust assets, and forgiveness of debt to be an unnecessary level of detail considering the compliance costs for trustees having to keep track of these.

Further, the need to consider whether a non-cash distribution is minor and incidental to the activities of the trust is subjective and requires trustees to go through a number of steps to determine this. In many situations, the compliance costs of determining whether a non-cash distribution is minor and incidental, may outweigh the costs of disclosing the amount.

To simplify the disclosure of non-cash distributions, we recommend that the three categories (use of trust property, distribution of trust assets, and forgiveness of debt) should be combined into one "non-taxable distributions" field (also including capital and corpus), and that a de minimis should be introduced to replace the minor and incidental test.

Setting the de minimis at \$100,000 total non-cash distributions per beneficiary, per income year, would mean that 57% of the disclosures about non-cash distributions to beneficiaries would no longer need to be disclosed. 96% of the total value of non-cash distributions would still need to be disclosed.

This approach would also mean that the many trustees that considered whether a non-cash distribution was minor and incidental would no longer need to, and could rely on the more objective test of a bright-line threshold.

The de minimis test should also be based on what could reasonably be expected to be under the de minimis, so that trustees are not required to obtain a valuation for small non-cash distributions.

The same approach should apply to non-cash settlements.

Table 2: Non-cash distributions in 2023

	Non-cash distributions per beneficiary in 2023 tax year	
	Up to \$100,000	More than \$100,000
Trusts	1,400 (56%)	1,100 (44%)
Beneficiaries	2,400 (57%)	1,800 (43%)
Total non-cash distributions	\$64m (4%)	\$1,738m (96%)
<i>Use of trust property</i>	\$10m (37%)	\$17m (63%)

<i>Distribution of trust assets</i>	\$35m (2%)	\$1,415m (98%)
<i>Debt forgiveness</i>	\$19m (6%)	\$306m (94%)

Table 3: Non-cash settlements in 2023

	Non-cash settlements per settlor in 2023 tax year	
	Up to \$100,000	More than \$100,000
Trusts	1,600 (33%)	3,200 (67%)
Settlors	2,500 (34%)	5,000 (67%)
Total value of non-cash settlements	\$50m (1%)	\$5,800m (99%)

Beneficiary current account movements (Q27AB)

Changes in beneficiary current accounts are important for understanding whether a distribution has actually been made (is the beneficiary benefitting from the distribution).

Distributions of cash non-taxable distributions (Q27W and Q27X)

There are three categories of trusts for tax purposes in New Zealand:

- **Complying trusts** are trusts that have always paid tax in New Zealand on the worldwide income derived by the trustee, and the tax obligations relating to the trustee's income tax liability have been satisfied.
- **Foreign trusts** are trusts that have not had a New Zealand resident settlor at any time since 17 December 1987.
- **Non-complying trusts** are trusts that are neither complying nor foreign trusts.

Understanding who is receiving distributions of capital (realised capital gains or accumulated trustee income)¹ or corpus is useful for understanding who is benefitting from a trust. Distributions of accumulated income or capital gains from a non-complying trust are taxable, but distributions for corpus are not. However, for complying trusts there are no tax

¹ Note: For trust law, accumulated trustee income may not be capital gains when considering entitlements of different beneficiaries to income and capital.

implications of whether a distribution is made from capital or corpus, meaning it may not be necessary to require this information.

Ideally, we would remove the requirement for trustees of complying trusts to distinguish between whether the source of distributions was from capital or corpus, while retaining it for non-complying trusts. However, distinguishing requirements for the different categories of trusts could add unnecessary complexity, so on balance we recommend removing the requirement for both complying and non-complying trusts.

Mismatch between income allocation and trust distributions

Disclosure data on distributions and details of beneficiaries has helped Inland Revenue identify artificial income allocations. These are allocations to beneficiaries who did not exist or were not a beneficiary at the time of the distribution.

Misuse of income allocations to tax-exempt entities

Trusts are allocating taxable income to entities who are income tax exempt, such as charities. A small portion of these entities are not distributing those funds to the tax-exempt entity, getting immediate tax relief for the income yet not enabling those entities to apply the funds for their charitable purposes. The disclosure data has enabled these issues to be identified across the trust population for the first time.

Social policy issues

Additional details of distributions and jurisdictions of beneficiaries has enabled Inland Revenue to identify customers who had been claiming excess Working for Families tax credits when the family had access to significant additional funds to meet their living costs. This has enabled us to reassess and recover overpaid entitlements, and to prevent future payments being overpaid.

Resident student loan borrowers who receive additional distributions are also required to include these in their repayment calculations. The disclosure of distributions along with beneficiary identification data and jurisdictional information has enabled us to enforce repayment.

Recommendation R8: Trustees should not be required to distinguish between whether a non-cash distribution was a distribution of trust assets, the use of trust property for less than market value, or the forgiveness of debt.

Recommendation R9: Trustees should only be required to disclose non-cash distributions or settlements if the total value in an income year can reasonably be expected to be no more than \$100,000.

Recommendation R10: Trustees should not be required to distinguish between whether a cash distribution was made from capital or corpus.

Trust information: Beneficiary details

Context

Prior to the trust disclosure rules, trustees were required to disclose in the [IR6](#) return the name, full address, date of birth, and IRD number for beneficiaries that received a distribution of income. The trust disclosure rules slightly expanded this to include the jurisdiction of tax residency and Tax Identification Number (TIN).

Due to the trust disclosure rules requiring non-taxable (cash and non-cash) distributions to be disclosed, this has meant that trustees are now required to disclose beneficiary details in more situations.

Trustees are required to disclose the following details about beneficiaries that receive a distribution:

Personal details

- Full name
- Date of birth (or commencement date for an entity)
- Full address
- Jurisdiction of tax residency
- IRD number
- Tax Identification Number (TIN)

Qualitative interview feedback

Most stakeholders said that collecting additional beneficiary information, such as IRD numbers and dates of birth, can be difficult and time consuming. One stakeholder

highlighted that holding this information is not without risk for advisors. Another said that it can be difficult to find the beneficiaries themselves, especially if a trust has many. A stakeholder also highlighted that a beneficiary can have capacity issues and may be unable to comply.

Some stakeholders suggested that mandatory provision of information by beneficiaries would be helpful for trustees, eg, a statutory provision. Another suggested that a non-declaration rate could apply if the required information is not provided.

Inland Revenue comment

Collecting additional data on beneficiaries, including IRD numbers and dates of birth, has enhanced our ability to correctly identify beneficiaries and ensure trust income is accurately attributed to the correct person. This has become more critical given many taxpayers now receive an automated income tax assessment each year.

The required identifier information is standard for determining the identity of a person. Reducing the required number of identifiers would risk Inland Revenue not being able to correctly identify the right person.

Misapplication of minor beneficiary rule

Income allocated to minors (children under the age of 16) is generally required to be taxed at the trustee tax rate. The additional details of beneficiaries, including dates of birth, has enhanced Inland Revenue's ability to identify income allocated to minors and ensure that it is appropriately taxed.

Statutory provision for collection of personal information

To help trustees collect the relevant details about beneficiaries, settlors and appointers, we recommend introducing a statutory provision that requires beneficiaries, settlors and appointers to provide the relevant information to trustees. This change should be progressed for the next available Bill, rather than the [Taxation \(Annual Rates for 2024–25, Emergency Response, and Remedial Measures\) Bill](#).

Recommendation R11: A statutory provision should be introduced to require beneficiaries, settlors and appointers to provide relevant personal information to trustees. This change should be considered for inclusion in the next available Bill.

Trust information: Settlements and settlor details

Context

The requirement to disclose details of settlements and settlors was a new requirement of the trust disclosure rules. The [IR6S](#) return requires trustees to disclose details of settlements made on the trust during the relevant year:

- Cash
- Shares/ownership interests
- Financial arrangements
- Services
- Land
- Buildings
- Other settlements
- Nil value settlements

Non-cash settlements that are minor and incidental to the activities of the trust do not need to be disclosed.

The [IR6S](#) return also requires trustees to disclose details of persons who make a settlement on the trust during the relevant year:

Settlor details

- Full name
- Date of birth (or commencement date)
- Full address
- Jurisdiction of tax residency
- IRD number
- Tax Identification Number (TIN)

Qualitative interview feedback

Some stakeholders said that the settlor definition is complex, and one said that professional services may be required to determine who the settlors are. Some stakeholders also indicated that it can be difficult to gather settlor information (eg, IRD numbers) for historic trusts, particularly if the settlor is deceased.

Inland Revenue comment

Unlike most jurisdictions, New Zealand has a settlor-based trust taxation regime. The residence of the settlors of a trust determines whether it is a domestic (complying) or foreign trust.

A person being a settlor is also important for calculating income for Working for Families entitlements and student loan repayment obligations.

As noted above, we are recommending that:

- trustees should not be required to separately disclose land and buildings for both financial information and settlements ([recommendation R5](#))
- trustees should only be required to disclose non-cash distributions or settlements if the total value in an income year can reasonably be expected to be not more than \$100,000 ([recommendation R9](#)), and
- a statutory provision should be introduced to require beneficiaries, settlors and appointers to provide relevant personal information to trustees ([recommendation R11](#)).

Trust information: Appointer details

Context

The [IR6P](#) return requires trustees to disclose the following details about persons with the power to appoint/dismiss trustees, add/remove beneficiaries, or amend the trust deed:

- | | |
|--|--|
| ▪ Full name | ▪ IRD number |
| ▪ Date of birth (or commencement date) | ▪ Tax Identification Number (TIN) |
| ▪ Jurisdiction of tax residency | ▪ Start and end dates for power of appointment |

The [IR6P](#) is not included as part of the annual tax return and is only required to be provided if there is a change in the appointers of the trust.

Qualitative interview feedback

Some stakeholders highlighted the requirement to disclose powers of appointment as a problem area and questioned Inland Revenue's need for this information. Some said that the definition is complex, and that trustees may not know who the appointer is. One stakeholder also said that a trust may not have an appointer.

Inland Revenue comment

Details of persons with the power to add or remove trustees or beneficiaries of a trust are important for understanding who is “controlling” the trust.

As noted above, we recommend that a statutory provision should be introduced to require beneficiaries, settlors and appointers to provide relevant personal information to trustees ([Recommendation R11](#)).

Changes could be progressed to either include the [IR6P](#) as part of the annual trust tax return, or by adding a tick box for trustees to be prompted to consider whether there have been any changes in appointer details. However, given that many trusts will not have a change in appointer details each year, making these changes would result in unnecessary additional compliance costs for all trusts subject to the disclosure rules.

We recommend undertaking further work to determine how best to improve compliance with disclosing appointer details without imposing unnecessary compliance costs.

Recommendation R12: Further work should be undertaken to determine how to improve compliance with disclosing appointer details.

Forms: Trust tax returns

Qualitative interview feedback

Some stakeholders considered that Inland Revenue could make improvements to the trust tax returns. For example, some said that pre-population should be available in myIR (such as rolling settlor and beneficiary information forward to the next year), and one stakeholder said that the number of forms should be reduced when possible. A few stakeholders also suggested that adding further detail and guidance to the forms would be helpful.

However, a few stakeholders also found that filling out the forms was not an issue once the information had been gathered.

Inland Revenue comment

We recommend that myIR should allow trustees to pre-populate information from prior disclosures (such as beneficiary details). It is highly unlikely that this change could be implemented in time for the 2025 tax returns.

We expect that trustees that use software providers, rather than myIR, to file their tax returns will already be able to pre-populate information. However, this may vary depending on the specific provider.

As noted above, we recommend undertaking further work, including public consultation, to determine how best to reduce duplication between the [IR10](#) and [IR6](#) forms.

Recommendation R13: myIR should allow trustees to pre-populate trust disclosure details from previous years.

Consequential benefits

Qualitative interview feedback

Some stakeholders said that the increased disclosure requirements can lead to a better understanding of the trust itself. For example, some said that advisors may have a better inside view of their client's trust, and that trustees may be encouraged to consider whether the trust is still relevant. Some stakeholders also said that there is now greater engagement with the trust rules, and that trustees may be required to upskill in this area.

In contrast, some stakeholders said that the increased disclosure requirements have not benefitted trustees. For example, professional trustees will already have an understanding, and trustees who are not professional trustees may rely on advisors to comply. They also said that the disclosures have had little benefit when accounts were already prepared.

Some stakeholders also indicated that trusts are less viable due to the increased disclosure requirements and the introduction of the Trusts Act 2019. A few noted that trusts may now need professional trustees, and that some trusts have wound up as a result of the high compliance costs.

Part 2: Inland Revenue data analysis

This part assesses why trusts need to disclose information and provides examples of the benefits of the disclosure data to Inland Revenue.

Key insights from 2023 disclosures

In November 2023, Inland Revenue released insights from the 2022 disclosures.² The Appendix contains updated data and insights from 2023.

The 2023 disclosures are broadly consistent with 2022. There are no major new insights, yet issues and trends remain:

- There are similar patterns to return filing in both 2022 and 2023:
 - some trusts with no income continue to voluntarily file disclosures
 - some trusts with income are not filing either an [IR6](#) or [IR10](#).
- Total assets of section 59BA trusts have grown by \$16 billion to \$511 billion.
- Untaxed realised gains are significantly down in 2023 compared to 2022. However, this also appears to be a broader trend across all [IR10](#) filers.
- Loans to associated parties (trust asset) have grown by \$12 billion to \$69 billion.
- Borrowings from associated parties (trust liability) have grown by \$9 billion to \$59 billion.
- The tax reported by trustees as payable on behalf of beneficiaries is only 1% of total beneficiary income.

² <https://www.ird.govt.nz/about-us/tax-statistics/revenue-refunds/trusts-and-estates-statistics/trust-disclosure-information-from-the-2022-tax-year>

Examples of how disclosures help Inland Revenue better understand trusts

The data collected under the trust disclosure rules is achieving its purpose of enabling Inland Revenue to better understand trusts. The following examples show how the disclosure data is supporting the development of tax policy and tax compliance.

Guiding tax policy development

Budget 2023 included proposals to increase the trustee tax rate to 39%. Following the announcement, officials undertook consultation with a range of stakeholders on the impact of the proposals and potential ways to mitigate over-taxation of trust income. Trust disclosure data was used to help inform the policy development of a variety of options considered by the Finance and Expenditure Committee to mitigate over-taxation, including the trustee income de minimis. The proposals were enacted in March 2024, applying for the 2024–25 and later income years.

The trust disclosure data has also shed light on other potential tax policy issues, including significant amounts of beneficiary income allocations not being distributed and potential issues with income allocations to tax-exempt entities such as charities.

Part 3: Quantitative survey data

From 31 May to 17 June 2024, Inland Revenue conducted an online survey of trusts to estimate the impact of the trust disclosure requirements in recent years.

Of the 17,270 trusts surveyed, 1,173 valid survey responses were received (a response rate of 7%). The responses were weighted based on whether the trust earned assessable income in 2023 and whether the survey was sent to a tax agent.

Further details on the survey methodology are included in the Appendix.

Key survey insights

- The survey results on how compliance costs have changed in the 2021 to 2023 financial years are mixed.
- Many trustees/tax agents have reported high compliance costs in the first two years of the disclosure rules, however some have reported a decrease. This may reflect the varied uses of trusts in New Zealand, and that some trusts will face higher compliance obligations (likely due to having more complex arrangements).
- Almost a quarter of respondents indicated that they did not prepare financial statements in the year before the disclosure rules. This may indicate that some of the increased compliance costs in 2022 and 2023 may reflect the costs of trustees preparing financial statements for the first time, rather than specific issues with the disclosure regime.
- About a third of respondents reported incurred additional compliance costs in the first year of the regime for the one-off collation of information. This drops to only 4% in the second year, illustrating that many of the compliance costs may be related to the one-off establishment of trust processes.

Preparation of financial statements

The survey asked participants to estimate the fees incurred in the preparation of financial statements for the financial years ending 2021, 2022 and 2023. We compared how fees have changed from the year before the disclosure regime (2021 financial year) to the second year of the regime (2023 financial year). This comparison was used to ensure that the responses were not distorted by the one-off costs from the first year of the regime.

- **40%** of respondents said that fees were more than 5% higher

- **38%** said fees were with $\pm 5\%$
- **22%** said fees were 5% lower.

Many trustees may be preparing financial statements for the first time because 25% of respondents said they did not prepare financial statements for the year before the disclosure rules (2021 year).

Table 4: Were fees incurred by trustees to prepare trust's financial statements?

	All valid responses n = 1,173		
Financial year	2021	2022	2023
No financial statements were prepared	25%	22%	0%
Nil fees	14%	17%	25%
>0 fees	49%	48%	54%
Unsure/don't know	12%	14%	21%
TOTAL	100%	100%	100%

Preparation of tax returns

The survey asked participants to estimate the fees incurred in the preparation of tax returns for the financial years ending 2021, 2022 and 2023. Again, we compared how fees have changed from the year before the disclosure regime (2021 financial year) to the second year of the regime (2023 financial year):

- **52%** of respondents said that fees were more than 5% higher
- **29%** said fees were with $\pm 5\%$
- **19%** said fees were 5% lower.

One-off collation of information

The survey asked participants to estimate the fees (and uncharged hours) incurred to collate information for the first time to comply with the disclosure requirements:

- **35%** of respondents said they incurred fees for the one-off collation of information to comply with the disclosures for the 2022 year (first year of disclosures):
 - mean fees incurred: \$1,400

- median fees incurred: \$785.
- **21%** of respondents said additional hours (that were not charged) were needed for the one-off collation of information to comply with the disclosures for the 2022 year (first year of disclosures):
 - mean additional uncharged hours: 13 hours
 - median additional uncharged hours: 2 hours.
- Only **4%** of respondents said they incurred fees for the one-off collation of information for the 2023 year (second year of disclosures). This supports anecdotal evidence that compliance costs are not as high in the second year because trustees and tax agents have already collected the one-off information and established processes.

Part 4: All-of-government benefits

Anti-Money Laundering/Countering Financing of Terrorism

New Zealand received an uplift in our Anti-Money Laundering/Countering Financing of Terrorism (AML/CFT) rating with the OECD Financial Action Task Force (FATF) due to the Trusts Act 2019 and increased disclosure requirements for trustees. The latter were seen as a very important transparency initiative, especially as to identification of controlling persons.

New Zealand's AML/CFT regulatory system is supported by multiple agencies and is an all-of-Government priority. Although the trust disclosure regime has a tax focus, significant changes to reduce the disclosure requirements for trustees may have a negative impact on New Zealand's AML/CFT rating.

Therefore, to ensure that there are no unintended consequences of making changes to the trust disclosure regime, we recommend that the Ministry of Justice is consulted on changes that would:

- reduce the transparency of controlling persons of trusts, or
- significantly affect the trust disclosure regime (for example, the repeal of the trust disclosure requirements in section 59BA of the TAA).

Recommendation R14: The Ministry of Justice should be consulted on any changes to the trust disclosure rules that would reduce the transparency of controlling persons of trusts or significant changes to the trust disclosure regime.

Conclusions

Throughout our post-implementation review of the trust disclosure rules in 2024, we have received a range of differing, and at times conflicting, views from stakeholders, trustees and tax agents – this range of views can be found in all aspects of the regime, from technical aspects to big picture questions.

The differences reflect the unique role that trusts play in New Zealand. Trusts are used in a wide range of contexts, with different purposes, objectives, and activities. Although distinctions can be made between different types of trusts, the vast majority are subject to the same laws and tax settings as each other.

With this context, providing one regime that fits all is challenging at best. We have attempted to strike a balance between considering what information needs to be collected from most trusts, versus which information is better suited for one-off collections depending on the specific circumstances and tax risks.

Broadly, the recommendations of the review fall into the following categories:

- **Reducing granularity** – removing unnecessary breakdowns of disclosures.
- **Reducing subjectivity** – changes that could make it simpler to comply by reducing the number of subjective tests in the rules.
- **Improving the taxpayer experiences** – improving guidance, forms and myIR.

Not all the recommendations will be able to be immediately progressed. Recommendations that require legislative change will be subject to Ministerial approval, and some of the recommendations may require sufficient lead in times for software providers to implement.

Therefore, subject to whether a change can feasibly implemented by software providers, we recommend progressing the recommendations in this report for the 2025 trust tax returns. The exceptions to this are recommendations that require further work and the recommendation to consider whether small trusts should be exempt from the disclosure rules or have reduced requirements.

The trustee tax rate was increased for the 2024–25 and later income years. Disclosure data for the 2025 tax year will be important in monitoring the effectiveness of the 39% rate and identifying non-compliance, particularly in relation to the modifications to the 39% rate such as the \$10,000 de minimis. Understanding behavioural changes both before and after a rate change are equally important. Therefore, we recommend that changes to the disclosure requirements for small trusts be considered for the 2026 year.

Table 5: Summary of recommendations

#	Recommendation	Proposed timing
R1	Consideration of whether “small trusts” should be exempt from, or have reduced requirements under, the trust disclosure rules should be deferred until 2026 (after the 2024–25 returns have been analysed).	Further work required.
R2	The development of any changes to the trust disclosure rules should take into account whether the change will result in taxpayers incurring additional one-off compliance costs.	Each time changes are considered.
R3	Further work should be undertaken to reduce duplication between the IR10 and IR6 forms.	Further work required.
R4	The terminology used in trust disclosure guidance should be reviewed to ensure it is well understood and reflects how trusts are used.	Further work required.
R5	Trustees should not be required to separately disclose land and buildings (for both the financial information and the settlements on the trust).	Changes made to 2025 returns.
R6	The thresholds for determining whether a trust is eligible for simplified reporting requirements in the Order in Council should not be amended at this stage.	n/a
R7	The minimum standards in the Order in Council should not be amended at this stage.	n/a
R8	Trustees should not be required to distinguish between whether a non-cash distribution was a distribution of trust assets, the use of trust property for less than market value, or the forgiveness of debt.	Changes made to 2025 returns.
R9	Trustees should only be required to disclose non-cash distributions or settlements if the total value in an income year can reasonably be expected to be no more than \$100,000.	Changes made to 2025 returns.
R10	Trustees should not be required to distinguish between whether a cash distribution was made from capital or corpus.	Changes made to 2025 returns.
R11	A statutory provision should be introduced to require beneficiaries, settlors and appointers to provide relevant personal information to trustees.	Next available legislative vehicle.

#	Recommendation	Proposed timing
R12	Further work should be undertaken to determine how to improve compliance with disclosing appointer details.	Further work required.
R13	myIR should allow trustees to prepopulate trust disclosure details from previous years.	Further work required.
R14	The Ministry of Justice should be consulted on any changes to the trust disclosure rules that would reduce the transparency of controlling persons of trusts or significant changes to the trust disclosure regime.	If changes to the transparency of controlling persons are considered.

Appendix: Quantitative survey

Survey methodology

From 31 May to 17 June 2024, Inland Revenue conducted an online survey of trusts to estimate the impact of the trust disclosure requirements in recent years.

To form the survey population, 24,000 trusts that filed a tax return in 2023 were randomly chosen. This was reduced to 21,073 after excluding trusts without email address contact details or trusts that had been contacted in the last 6 months by Inland Revenue for a research survey.

To reduce the impact on trustees and tax agents, the number of surveys per email address was capped at 20. This further reduced the survey population to 17,270.

Inland Revenue received 1,173 valid survey responses (a response rate of 7%).

The responses were weighted based on whether the trust earned assessable income in 2023 and whether the survey was sent to a tax agent.

Subset	Did the trust have assessable income in 2023?	Does the trust have a tax agent?	Random sampling n = 21,073	Valid survey responses	
				Before weighting n = 1,173	After weighting n = 1,173
			%	%	%
A	Y	Y	46.9	42.9	46.9
B	Y	N	3.8	11.5	3.8
C	N	Y	39.9	26.1	39.9
D	N	N	9.5	19.5	9.5
Total			100.0	100.0	100.0

The survey results in this report have a maximum margin of random sampling error of ± 5 percentage points at the 95% confidence level.