

Minimum financial reporting requirements for foreign trusts

An officials' issues paper on proposed requirements for the preparation of financial statements

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Prepared by Policy and Strategy, Inland Revenue

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CHAPTER 1

Introduction and summary

- 1.1 The Government Inquiry into Foreign Trust Disclosure Rules recommended, amongst other things, that foreign trusts that have a New Zealand-resident trustee should have to file an annual return with Inland Revenue, which includes the trust's financial statements. The Government adopted the Inquiry's recommendations and the resultant amendments have recently been enacted.
- 1.2 These amendments require on-going disclosures by resident foreign trustees, including the requirement to file, as part of an annual return for the foreign trust, financial statements of the trust if the trustee prepares them, or is required to prepare them.
- 1.3 This paper proposes that resident foreign trustees of foreign trusts be required to prepare financial statements for the trust and specifies the suggested minimum requirements for those financial statements. The purpose of this paper is to consult on these minimum requirements.
- 1.4 "Foreign trusts" are defined in section HC 11 of the Income Tax Act 2007. The term "foreign trusts" as used in this paper is limited to foreign trusts that have a New Zealand-resident trustee (a "resident foreign trustee" as defined in the Tax Administration Act 1994 (the TAA) at section 3).

Tax Administration Act

- 1.5 The TAA was recently amended (by the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017) to increase the disclosure rules for foreign trusts as recommended by the Inquiry.
- 1.6 New section 59D of the TAA requires that resident foreign trustees must file an annual return for the foreign trust that must include a set of financial statements if they are prepared or required to be prepared, and provide details on the foreign trust's settlements and beneficiary distributions. For further information on this section's requirements refer to the Appendix.
- 1.7 It is expected that the Government would enable the requirement for resident foreign trustees of foreign trusts to prepare financial statements for the trust by Order in Council (OIC) using the generic provisions of the TAA at sections 21B and 21C. The OIC would specify a minimum level of required detail for the financial statements.

The proposals in summary

- 1.8 For periods commencing 1 April 2017 and later, all resident foreign trustees that have an obligation to file an annual return in 2018 and subsequent years should have financial statements prepared to at least the specified minimum requirements. There will be an exception to this where the trust has a statutory obligation to prepare financial statements.
- 1.9 We suggest that the minimum requirements for these financial statements would be relatively straightforward historical cost, accrual-based financial statements that would constitute special-purpose financial statements.
- 1.10 Notes to the financial statements or separate schedules would include a statement of accounting policies and detailed reconciliations of settlors' and beneficiaries' current accounts.
- 1.11 We propose that the financial statements will require that all accounts with settlors and beneficiaries be reconciled for movements through the reporting period. This is in addition to the specific disclosure requirements about settlements and distributions to beneficiaries that are required under the new section 59D of the TAA (refer to the Appendix for the detail of this).
- 1.12 Requirements would be principles-based, although some detail would be required. This is because it is inappropriate for Inland Revenue to attempt to set the format of financial statements or tell accountants the specific detail of what should be in financial statements. Rather, it is envisaged that Inland Revenue would set the principles and the foreign trust specific detail and then rely on the judgement of the person preparing the financial statements for the general accounting detail. The proposed detail about the level of reporting and associated disclosures is contained in Chapter 2.
- 1.13 A higher standard may be adopted (or required by other law) in which case, so long as the required disclosures are incorporated, these minimum requirements are superseded.

How to make a submission

- 1.14 Submissions are invited on the level of detail that is suggested for the financial statements. While anyone may submit on it, this paper has been provided to interested parties as determined by all those who made a submission to the Finance and Expenditure Committee on the recent amendments to the Tax Administration Act 1994 concerning foreign trusts.
- 1.15 Submissions on this paper should be made by 29 June 2017 and can be sent to: policy.webmaster@ird.govt.nz with "Financial reporting for foreign trusts" in the subject line.

Alternatively they can be sent to:

Financial reporting for foreign trusts
C/- Deputy Commissioner
Policy and Strategy
Inland Revenue
P O Box 2198
Wellington 6140

- 1.16 Submissions may be the subject of a request under the Official Information Act 1982, which may result in their publication. The withholding of particular submissions on the grounds of privacy, or for any other reason, will be determined in accordance with that Act. Those making a submission who consider there is any part of it that should properly be withheld under the Act should clearly indicate this.

CHAPTER 2

Proposed minimum financial reporting requirements

- 2.1 These are the proposed minimum financial reporting requirements for special-purpose financial statements for foreign trusts.
- 2.2 These minimum requirements are high-level and, while financial statements and accompanying schedules must be prepared to at least these minimum requirements, they may be prepared to a higher standard or even be general-purpose financial statements, so long as the required information is provided.
- 2.3 The minimum requirements proposed are:

Form of financial statements

- a) The financial statements must consist of –
- i. a balance sheet setting out the assets, liabilities and net assets of the foreign trust as at the end of the income year; and
 - ii. a profit and loss statement showing income derived, and expenditure incurred, by the foreign trust during the income year.

Principles with which statements must comply

- b) The financial statements must be prepared applying the principles of accrual accounting.

Valuations

- c) The financial statements may, however, disclose amounts using the following valuation principles:
- i. tax values, when those values are consistent with double-entry and accrual accounting; and
 - ii. historical cost with impairment or depreciation as appropriate; and
 - iii. market values, when, in the preparer's opinion, market values provide a better basis of valuation than those in subparagraphs (i) and (ii).

Statement of accounting policies

- d) The financial statements must contain a statement of accounting policies setting out, in sufficient detail so that a user can understand the material policies that have been applied or changed:
- i. the policies and assumptions that have been used in the preparation of the financial statements; and
 - ii. a description of the effect of any material changes in the accounting policies used since the financial statements prepared for the previous income year.

Matters that statements must show

- e) The financial statements must show the matters prescribed.
- f) The financial statements must disclose comparable figures for the previous income year where financial statements have been prepared for that previous year.

Reconciliations

- g) A statement of the foreign trust's New Zealand taxable income (if any) in NZD for the income year.
- h) Reconciliations from opening to closing balance for all settlor and beneficiary accounts and of the corpus on a line by line basis.

Currency

- i) The financial statements may be prepared in any currency that is appropriate having regard to the circumstances of the foreign trust and its settlors and beneficiaries.

APPENDIX

Extract from special report – *Foreign trust disclosure rules*¹

“An ongoing requirement for the contact trustee following the registration of a foreign trust is to prepare an annual return for the foreign trust and send it to the Commissioner of Inland Revenue. This is set out in new section 59D [of the Tax Administration Act 1994].

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

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

At the time of registration, the contact trustee for a foreign trust must provide information about settlements made on the trust before the trust’s registration. To ensure that the information held by the Commissioner of Inland Revenue is kept up to date, subsequent settlements must be reported in the annual return. Consistent with the disclosure of historical settlements, information relating to the provision of minor services at less than market value

¹ *Foreign trust disclosure rules* – pages 16 & 17 of a special report published in March 2017 at taxpolicy.ird.govt.nz

that are incidental to the activities of the trust does not need to be provided. Also see the section 'Information required on registration'.

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

Financial statements

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

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

Due dates

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

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

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