

Trusts – disclosure requirements for foreign trusts

Trustees are required to ensure the due and proper administration of trusts for the benefit of beneficiaries.

Disclosure and record keeping requirements for foreign trusts were introduced in 2006 and further updated in 2017. If you are a [New Zealand-resident and trustee of a foreign trust](#) (referred to as a 'resident foreign trustee') you must [register the foreign trust](#) with Inland Revenue with payment of a prescribed fee of \$270 and disclose certain information including:

- the name of the trust
- the date and details of each settlement on the trust
- the name, email address, physical residential or business address, jurisdiction of tax residence, taxpayer identification number, and the connection with the trust of:
 - each settlor
 - each person with power (or power to control the exercise of such power) to appoint or dismiss a trustee, amend the trust deed, or to add or remove a beneficiary
 - each person with a power to control a trustee in the administration of the trust
 - each trustee
 - for a fixed trust, each beneficiary or nominee for an underlying beneficiary (including a parent or guardian in respect of minor beneficiaries)
- for a fixed trust and a beneficiary who is a minor, the name, age, and taxpayer identification number of the beneficiary
- for a discretionary trust, details of each beneficiary or class of beneficiary
- a copy of the trust deed and any documents that amend or supplement the trust deed
- a declaration from the trustee that the persons specified in the third bullet point above have been informed of and agree to provide the information necessary to comply with the Tax Administration Act 1994, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and its regulations

If a New Zealand foreign trust is not registered or does not meet annual disclosure obligations as below, then the trust will lose its exemption from New Zealand tax on foreign sourced income.

Foreign trusts must also meet [annual filing obligations](#). An annual return must be filed with Inland Revenue within six months of balance date, including the following:

- payment of a prescribed annual fee of \$50
- financial statements of the trust if the trustee prepares or is required to prepare financial statements for the trust
- the date, amount and nature of each settlement made during the year
- the date, amount and nature of each distribution made by the trustee during the year including the name of the beneficiary receiving the distribution
- for each beneficiary that receives a distribution, the email address, physical residential address, jurisdiction of tax residence, and taxpayer identification number (if a minor, then the age of the minor beneficiary and taxpayer identification number of the beneficiary's parent or guardian)

Qualifying resident foreign trustees and approved organisations

When a New Zealand corporate trustee has a director who is both resident in New Zealand and is a member of an approved organisation (such as the New Zealand Law Society, Chartered Accountants New Zealand Australia or the New Zealand Branch of the Society of Trust and Estate Practitioners (STEP), the New Zealand corporate trustee is a 'qualifying resident foreign trustee'.

A resident foreign trustee may also be a qualifying resident foreign trustee if he or she is a member of an approved organisation such as one of those mentioned above.

Records

A resident foreign trustee must keep records relating to each foreign trust for New Zealand tax purposes for at least seven years, including:

- evidence of the creation and constitution of the foreign trust (trust deed or similar)
- records of settlements made on, and distributions made by, the foreign trust, including dates of settlement or distribution, names, and addresses (if known) of settlors and recipients of distributions
- the foreign trust's assets and liabilities, and details of money received and spent by the trustee relating to the foreign trust, including evidence of when and where the receipt and expenditure takes place; and
- if the foreign trust carries on a business, the charts and codes of accounts, accounting instruction manuals and system and programme documentation for the accounting system used each income year to administer the trust

Inland Revenue may request these, periodically for foreign trusts with an Australian-resident settlor, or on a case-by-case basis if a valid request for information is received from a country New Zealand has a double tax agreement (DTA) with.

If requested, the records must be such that Inland Revenue can determine the financial position of the foreign trust.

Failure to comply with the requirements may attract penalties, for resident foreign trustees or, in the case of a corporate trustee, for directors or other individuals in positions of influence over the affairs of the corporate trustee.

Tax position

Foreign-sourced income derived by the trustee of a foreign trust is exempt from income tax in New Zealand if the settlor is not resident in New Zealand. Income derived in New Zealand by the trustee of a foreign trust will be taxable.

In some circumstances, resident foreign trustees (other than 'qualifying resident foreign trustees') may be taxed in New Zealand on the worldwide income of the foreign trust, until the requested information is provided. If a foreign trust has at least one qualifying resident foreign trustee, the income of that trust will never be subject to tax in New Zealand. These trusts effectively enjoy a safe-harbour treatment.

Keep in mind

Let us know if changes occur that affect your trust and catch up with us about your obligations as trustees to disclose information, whether to beneficiaries or to Inland Revenue.