

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA  
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

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## FACT SHEET | PUKA MEKA

# Tax residence and trusts

Issued | Tukuna: Issue Date

IS ##/## FS 3

This fact sheet accompanies **IS xx/xx: Tax residence** and summarises the tax residence rules in the Income Tax Act 2007 relating to trusts. The interpretation statement explains the rules for individuals, companies and trusts in more detail. There are also fact sheets covering tax residence of individuals and companies.

## RELATED DOCUMENTS | TUHINGA WHAI PĀNGA

For more information on trusts, see:

- [IS 24/01: Taxation of trusts](#)
- [IS 19/04: Income tax – distributions from foreign trusts](#)

## Key provisions | Whakaratonga tāpua

**Sections YD 1 and YD 2:** These sections set out the tax residence rules for individuals and companies. The rules apply (as relevant) to persons connected with a trust – the trustees, settlors and beneficiaries.

**Section YA 1 definition of “trust rules”:** These rules include many of the provisions concerning the taxation of trustees and beneficiaries of a trust. They also include provisions relating to compliance obligations persons connected with a trust may have.

## Key terms | Kīanga tau tāpua

<b>beneficiary income</b>	Income the trustee derives to the extent it vests in a beneficiary during the year or is paid within defined times.
<b>complying trusts</b>	Trusts where the trustee has paid tax on worldwide income, whether by obligation or election, and the tax obligations relating to the trustee’s income tax liability have been met.
<b>dual status trusts</b>	Trusts that meet the criteria to be both a complying trust and a foreign trust.
<b>foreign trusts</b>	Trusts that have not had a New Zealand resident settlor at any time since 17 December 1987.
<b>foreign-exemption trusts</b>	Foreign trusts or trusts that have used the exemption on foreign-sourced amounts.
<b>non-complying trusts</b>	Trusts that are neither a complying trust nor a foreign trust.
<b>taxable distributions</b>	Taxable amounts that are not beneficiary income distributed by a foreign trust or a non-complying trust to a beneficiary.
<b>trustee income</b>	Income the trustee derives to the extent it is not beneficiary income.

## Introduction | Whakataki

1. Trusts are not separate entities for income tax purposes. The tax residence of the persons connected with a trust (that is, the trustees, settlors and beneficiaries) is relevant in determining the tax treatment of income a trustee derives and amounts distributed to beneficiaries as beneficiary income or taxable distributions. When the tax residence of persons connected with a trust changes, it usually affects how income is taxed.
2. The normal tax residence rules for individuals and companies apply (as relevant) to the trustee, settlors and beneficiaries, depending on whether the person is a natural person or a company.
3. The tax residence rules for individuals and companies are explained in **IS xx/xx: Tax residence**, and summarised in fact sheets **IS xx/xx FS 1: Tax residence – individuals** and **IS xx/xx FS 2: Tax residence – companies**.
4. In applying the tax residence rules to a trustee, the:
  - natural person tax residence rules apply to any natural person acting in the capacity of trustee; and
  - company tax residence rules apply to any company acting in the capacity of trustee.
5. Multiple trustees are treated as a single notional person (“the trustee”) when considering tax residence. The single notional person is tax resident in New Zealand if any trustee is tax resident here. This means any income derived by a trustee, even if non-resident, is treated as derived by a New Zealand tax resident trustee.<sup>1</sup> If all the trustees are non-resident, the single notional person is non-resident.
6. Multiple trustees are also treated as a single notional person for the purposes of meeting tax obligations such as filing returns. The trustees are jointly and severally liable to satisfy the obligations of the single notional person. References to a “trustee” or “trustees” in this fact sheet are to the single notional person.
7. The usual rules about whether amounts are New Zealand-sourced or foreign-sourced are also relevant to how income derived by a trustee and amounts distributed to beneficiaries are taxed. However, the tax residence of the settlors (and therefore any change in their tax residence) can change the rules affecting foreign-sourced income.

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<sup>1</sup> The country where the non-resident trustee resides may also tax the same income. See [28].

8. In addition, the trust rules allow settlors, trustees and beneficiaries to make elections to change the way income a trustee derives would otherwise be taxed according to tax residence. Elections also affect the classification of trusts and the tax treatment of distributions to beneficiaries.
9. This fact sheet gives an overview of how the tax residence of the persons connected with the trust is relevant to the way in which trustee income, beneficiary income and taxable distributions are taxed. A fuller explanation in IS [xx/xx](#). Persons connected with a trust may need to seek professional advice.

## Beneficiary income

10. Beneficiary income is an amount the trustee derives to the extent to which it vests absolutely in interest in a beneficiary in the income year or is paid to the beneficiary within defined times.
11. Beneficiary income minors and close companies derive is not taxed as beneficiary income. It is treated as trustee income.
12. Beneficiaries who are New Zealand tax residents are taxed on worldwide income. Transitional residents and non-residents are taxed on New Zealand-sourced amounts but not (generally) foreign-sourced amounts. When a beneficiary's tax residence changes, their obligations on amounts derived change accordingly.

## Trustee income

### New Zealand-sourced income

13. A trustee is assessable on income derived from New Zealand whether it is tax resident or not.

### Foreign-sourced income

14. If the trustee is not tax resident, it is generally assessable on only foreign-sourced amounts if a settlor of the trust is resident in New Zealand at any point during the year. A transitional resident settlor is disregarded for the purposes of this rule. There are two exceptions to the general rule. Both exceptions can apply only if the trustee is non-resident for the entire income year.

15. Conversely, if the trustee is tax resident, it is generally exempt on foreign-sourced amounts if no settlor is a New Zealand resident at any time in the income year. A transitional resident settlor is disregarded for the purposes of this rule. Other conditions need to be met for the general rule to apply, including registration and reporting requirements.
16. Elections can be made so the trustee is assessable on worldwide income. This is relevant for the treatment of distributions made to beneficiaries that are not beneficiary income.

## Withholding tax on passive income

17. If an amount of income a trustee derives is passive income (for example, interest), resident withholding tax will usually be deducted if the trustee is treated as tax resident and non-resident withholding tax will usually be deducted if the trustee is treated as non-resident. In the latter case, the rate may depend on the provisions of any applicable double tax agreement (DTA).
18. If the amount of non-resident withholding tax withheld is correct and the non-resident trustee has no other income sourced from New Zealand, no further tax is payable. Otherwise, an **Income tax return: Non-resident individual taxpayers – IR3NR** needs to be filed.
19. If an election is made under s HC 33 of the Income Tax Act 2007 to treat a non-resident trustee as a New Zealand tax resident, resident withholding tax rather than non-resident withholding tax should be deducted on any passive income derived by the trustee.

## Summary of how beneficiary and trustee income are taxed

20. Table | Tūtohi 1 summarises the tax treatment of beneficiary income and trustee income.

**Table | Tūtohi 1 – How beneficiary income and trustee income are taxed**

Beneficiary income	
<p><b>Beneficiary tax resident in New Zealand</b></p> <ul style="list-style-type: none"> <li>All beneficiary income is included as assessable income except minor and close company beneficiary income.</li> <li>Transitional residents do not include most foreign-sourced amounts.</li> </ul>	<p><b>Beneficiary not tax resident in New Zealand</b></p> <ul style="list-style-type: none"> <li>Only New Zealand-sourced beneficiary income is included as assessable income.</li> </ul>
<p>Notes:</p> <ul style="list-style-type: none"> <li>Beneficiaries who ceased to be tax resident in New Zealand and become tax resident again within 5 years must include beneficiary income and taxable distributions received from foreign and non-complying trusts while non-resident.</li> <li>Trustees are generally liable as agent for the income tax liability of a beneficiary for their beneficiary income and any taxable distributions they derive.</li> </ul>	
Trustee income	
<p><b>New Zealand-sourced income</b> is included in assessable income whether or not the trustee is tax resident in New Zealand. If a non-resident trustee has only non-resident withholding income and it has been taxed correctly, the tax withheld is a final tax.</p>	
<p>Note: Trustee income also includes minor beneficiary income, close company beneficiary income and certain property settlements.</p>	
<p><b>Foreign-sourced income</b> is included in assessable income if:</p> <ul style="list-style-type: none"> <li>the trustee <b>was not tax resident</b> when the income was derived; and</li> <li>a settlor of the trust <b>was tax resident</b> (and not a transitional resident) in New Zealand at any point during the income year.</li> </ul> <p>In general, this rule does not apply if:</p> <ul style="list-style-type: none"> <li>no settlement has been made on the trust after 17 December 1987; or</li> <li>a settlement has been made but the settlor was non-resident between 17 December 1987 and the date of the settlement.</li> </ul>	<p><b>Foreign-sourced income</b> is exempt if:</p> <ul style="list-style-type: none"> <li>the trustee <b>was tax resident</b> when the income was derived; and</li> <li><b>no settlor</b> of the trust was tax resident (and not a transitional resident) in New Zealand at any point during the income year;</li> </ul> <p>provided that:</p> <ul style="list-style-type: none"> <li>if no settlor exists in the income year, the last surviving settlor was not a tax resident at the time of ceasing to exist;</li> <li>the trust was not at any time in the income year a superannuation fund or a testamentary or <i>inter vivos</i> trust of which any settlor was tax resident in New Zealand when they died;</li> <li>no s HC 33 election has been made; and</li> <li>the registration and reporting obligations for foreign exemption trusts have been met.</li> </ul>

## Taxable distributions

21. Beneficiaries of foreign trusts and non-complying trusts may also be assessable on distributions by the trustee of amounts other than beneficiary income. These are called taxable distributions. Taxable distributions from non-complying trusts are taxed at 45% rather than at the beneficiary's marginal tax rate.
22. The tax treatment depends on the classification of trust, the nature of the distribution, the source of the amount distributed and the tax residence of the beneficiary.
23. Table | Tūtohi 2 summarises the tax treatment where the amount distributed is New Zealand-sourced, whether the beneficiary is a New Zealand tax resident or not.

**Table | Tūtohi 2 – Tax treatment of New Zealand-sourced distributions from a trust**

Type of distribution from the trust	Complying trust	Foreign trust	Non-complying trust
Accumulated trustee income	Not taxable	Taxed at the beneficiary's marginal tax rate	Taxed at 45%
Non-associated capital gains and profits	Not taxable	Not taxable	Taxed at 45%
Associated capital gains and profits	Not taxable	Taxed at the beneficiary's marginal tax rate	Taxed at 45%
Corpus	Not taxable	Not taxable	Not taxable

24. Foreign-sourced amounts distributed to non-resident beneficiaries are not taxable.
25. A beneficiary who ceases to be tax resident in New Zealand and then becomes tax resident again within 5 years is taxable on amounts received from foreign and non-complying trusts during that period.

## Settlors may be agents for trustees

26. A New Zealand tax resident settlor may be liable as agent of the trustee for income tax payable by the trustee on trustee income derived in an income year. One exception is where the trust has at least one New Zealand tax resident trustee at all times during a year.

## Settlors may have disclosure obligations

27. If a trust is established by a New Zealand tax resident settlor with no New Zealand resident tax trustees, or it ceases to have any New Zealand tax resident trustees, a disclosure must be made to the Commissioner within 3 months. This is done by submitting the form **Settlors of trusts disclosure – IR462**. This disclosure must be made irrespective of whether an election under s HC 33 of the Income Tax Act 2007 has been made.

## Dual resident trustees require a determination

28. If a trustee as a single notional person is tax resident in New Zealand and one of the trustees becomes tax resident in a country that taxes trusts on the basis of the residence of trustees, the trust may be dual resident. If this occurs and there is a DTA in place between New Zealand and the other country, an application must be made to the competent authorities to determine tax residence for the purposes of the DTA. The benefits of DTAs are not available if this is not done.

## Trustees of foreign exemption trusts

29. If a trust is a foreign exemption trust, the trustee has registration and reporting obligations to fulfil to continue to receive an exemption on foreign-sourced amounts.

## Trustee as agent for a beneficiary

30. The trustee is generally agent for each beneficiary and must satisfy the income tax liability of the beneficiaries for their beneficiary income and any taxable distributions they derive.



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## About this document | Mō tēnei tuhinga

Some of the Tax Counsel Office's longer or more complex items are accompanied by a fact sheet that summarises and explains an item's main points. While it summarises the Commissioner's considered views, a fact sheet should be read alongside the full item to completely understand the guidance. Fact sheets are not binding on the Commissioner. See further [Status of Commissioner's advice](#) (Commissioner's statement, Inland Revenue, December 2012).