Inland Revenue
Te Tari Taake

[UNCLASSIFIED]

VARIATION > TRUST REPORTING REQUIREMENTS VARIATION

Variation to s 59BA(2) of the Tax Administration Act 1994 for trustees of certain trusts that derive a small amount of income

Issued: 18 November 2022

TRU 22/01

EFFECTIVE: for the 2021-22 income year and, for a trustee of a trust that is wound up during the 2022-23 income year, the 2022-23 income year.

Variation

The Commissioner of Inland Revenue has, under the discretion provided under section 59BA(5) of the Tax Administration Act 1994, made the following statutory variation:

1. Section 59BA(2)(a) – (e) of the Tax Administration Act 1994 is varied for a trustee of an Eligible Trust to the name, date of birth, jurisdiction of tax residence, and tax file number and taxpayer identification number, of each settlor who makes a settlement on the trust in the income year.

2. For the purpose of this variation, a trust is an Eligible Trust, for a tax year, where the trustee of the trust derives assessable income for the tax year, the trust is a complying trust under section HC 10 of the Income Tax Act 2007, and the trust satisfies Criteria A and/or Criteria B.

Criteria A:

3. For the corresponding income year for a tax year, the trustee of the trust:

   - has derived no income other than income that would be reportable income, as defined in section 22D of the Tax Administration Act 1994, if the trust was an individual, to the extent to which the total amount of that income does not exceed $1,000; and
   - has no deductions; and
   - has not been a party to, or perpetuated, or continued with, transactions with assets of the trust which, during the corresponding income year:
     - give rise to income in any person's hands; or
     - give rise to fringe benefits to an employee or to a former employee.

4. In determining whether a trust complies with the requirements of Criteria A, no account shall be taken of any:

   - reasonable fees paid to professional persons to administer the trust; or
   - bank charges or other minimal administration costs totalling not more than $1,000 in the income year; or
   - insurance, rates, interest, and other expenditure incidental to the occupation of a dwelling owned by the trust and incurred by the beneficiaries of the trust.

Criteria B:

5. For the corresponding income year for a tax year:

   - the trust is a testamentary trust; and

- distributions from the trust during the income year do not exceed $100,000; and
- where the trust earned income that would be reportable income, as defined in section 22D of the Tax Administration Act 1994, if the trust was an individual, tax has been deducted from that income at the correct rate, and the total amount of that income does not exceed $5,000 for the income year; and
- the trust derives non-reportable income of $1,000 or less and the trust has deductions against that income of at least $800 for the income year.

Application date

This variation applies for the 2021-22 income year and, for a trustee of a trust that is wound up during the 2022-23 income year, the 2022-23 income year.

Dated at Wellington on 18 November 2022.

Catherine Atkins

Deputy Commissioner, Customer and Compliance Services – Business

Inland Revenue

Background (material under this heading does not form part of the variation)

Summary of effect

1. Under s 59BA(1) of the Tax Administration Act 1994 (TAA) a trustee of a trust who derives assessable income for a tax year must file a return of all income derived in the corresponding income year (unless the trustee has been excused from filing a return under s 43B of the TAA). Section 59BA(2) of the TAA sets out further information a trustee is required to provide to the Commissioner of Inland Revenue (the Commissioner).

2. The variation limits the information that a trustee of an Eligible Trust is required to disclose to comply with s 59BA(2) of the TAA and means that a trustee of an Eligible Trust does not need to provide all the information set out in s 59BA(2)(a) – (e) of the TAA.

3. The Inland Revenue Department website will set out how a trustee applying the variation is to provide the information.

4. The variation will apply for the 2021-22 income year and, for a trustee of a trust that is wound up during the 2022-23 income year, the 2022-23 income year.

5. Section 43B of the TAA allows a trustee of a "non-active" trust to be excused from the requirement to file a return where certain criteria are met. A trustee of a trust that is excused from the requirement to file a return by s 43B of the TAA is not required to comply with the disclosure requirements in s 59BA(2).

6. Amendments proposed in the Taxation (Annual Rates, for 2022-23, Platform Economy and Remedial Matters) Bill (No 2) (the Bill), which was introduced on 8 September 2022, would broaden s 43B of the TAA, so that trustees of more trusts (including certain testamentary trusts) that derive small amounts of income would qualify for an exclusion from filing a return. These amendments are proposed to have effect from the 2021-22 income year.

7. The criteria to determine which trustees would qualify for the more limited disclosure requirements in this variation are consistent with what the criteria in s 43B of the TAA would be provided the amendments proposed in the Bill are enacted into law. However, unlike s 43B of the TAA, the variation does not provide an exclusion from

filing a return (i.e. a trustee of an Eligible Trust would still be required to file a return under s 59BA(1) of the TAA).

Provisions affected

8. Section 59BA(2) of the TAA.

Application of variation

9. This variation applies to a trustee of an Eligible Trust that is subject to the information disclosure requirements in s 59BA(2) of the TAA. It varies the information that a trustee of an Eligible Trust needs to provide to the Commissioner to comply with s 59BA(2) of the TAA.

10. A trustee of an Eligible Trust can also choose to provide all the information required by s 59BA(2)(a) – (e) of the TAA.

References

Legislative references

Tax Administration Act 1994: ss 59BA(2) and 59BA(5).

About this publication

The Commissioner has a discretion to vary the disclosure requirements in s 59BA(2) of the TAA for a trustee or a class of trustees. This discretion is to help ensure there is flexibility to account for situations where there are trustees who may be reasonably unable to meet some of the disclosure requirements and/or particular disclosure requirements are not necessary given the characteristics of a trust and, therefore, impose undue compliance costs.

The discretion is found in s 59BA(5) of the TAA. This variation is an exercise of that power.