

## INTERPRETATION STATEMENT: IS 16/02

### INCOME TAX – UNIT TRUSTS – WHEN A UNIT TRUST CAN HAVE A SINGLE UNIT HOLDER

All legislative references are to the Income Tax Act 2007 (the Act) unless otherwise stated. Relevant legislative provisions are reproduced in the Appendix to this Interpretation Statement.

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#### Summary

1. This interpretation statement sets out the Commissioner’s position on whether and when a unit trust can have a single unit holder for income tax purposes. A unit trust is a type of trust that is treated as a company for income tax purposes.
2. The commentary to BR Pub 95/5A: “Relationship between the “unit trust” and “qualifying trust” definitions” stated that a unit trust must have more than one unit holder. The Commissioner has been asked to reconsider this position. This statement sets out the Commissioner’s revised position.
3. The statement considers three issues. The first issue is whether a unit trust always needs more than one unit holder. It is concluded that a unit trust does not always need more than one unit holder. Rather, the “unit trust” definition requires only that the trust scheme or arrangement is “made for the purpose” or “has the effect” of **providing facilities** for multiple (more than one) unit holders.
4. The second issue is whether the “numbers rule” in s 33 of the Interpretation Act 1999 means that the “unit trust” definition can be satisfied even where facilities are provided for only one unit holder. The Interpretation Act provides that, unless the context requires a different interpretation, words in the Income Tax Act in the singular include the plural and words in the plural include the singular. If this interpretation was applied to the definition of “unit trust”, it would only be necessary for a unit trust to provide facilities for one unit holder.

5. However, the numbers rule does not always apply. Case law on the numbers rule shows that it is necessary to determine whether Parliament would have intended for the words in a provision to be read in the singular or plural. This requires consideration of the purpose of the provision, its text and its context in the enactment.
6. At the time the definition was enacted, unit trusts were not commonly used in New Zealand and existing ones were all widely-held investment vehicles. Further, the unit trust regime in the Income Tax Act was enacted to ensure that investors could not use unit trusts to avoid the two levels of taxation that were imposed on companies under the classical system of taxation. At the time, the companies legislation required companies to have more than one shareholder. In the Commissioner's view, Parliament would not have intended the "unit trust" definition to apply to a trust that could only have a single unit holder. Therefore, a unit trust must provide facilities for multiple subscribers to meet the Income Tax Act definition.
7. The third issue is when a trust with a single unit holder will be a unit trust. As noted above, to be a unit trust a trust must be **made for the purpose or have the effect of** providing facilities for multiple unit holders. There are two main ways that this requirement could be interpreted. The first is that it is determined purely by examining whether the legal relationships provide facilities for multiple unit holders. The second possibility is that there must also be an intention for the trust to have multiple unit holders. Either interpretation is available on the words.
8. On balance, the Commissioner concludes that whether a trust is made for the purpose or has the effect of providing facilities for multiple unit holders to invest should be determined by considering the legal relationships governing the trust – most importantly, the trust deed. Under this interpretation, the essential feature of a unit trust is the provision of the facilities for subscribers to participate, and that is not altered by there being only one subscriber.
9. The main reason for this conclusion is based on the workability of the different interpretations. Under this approach, the relevant inquiry is not a factual one to determine whether, in practice, multiple persons are actually participating in the facilities provided. Therefore, an entity can be a unit trust within the definition if there is only one subscriber, provided there are facilities for multiple subscribers. An interpretation that considers only legal relationships means that a unit trust that satisfies the test will always do so (barring any change to its trust deed). It is also easy to determine whether a trust provides facilities for multiple unit holders by looking at the legal arrangements.
10. On the other hand, intention can change over time. Therefore, an interpretation that takes account of intention could mean that a trust falls in and out of the unit trust regime as intentions change. It may also be difficult to determine whether the requisite intention exists at any given time – making the test potentially difficult to apply. It seems unlikely that this would have been Parliament's intention when enacting the provision. Consequently, on balance, the Commissioner's view is that the purpose of the "unit trust" definition is most consistent with a legal relationships test. Given this, it is not necessary to establish an intention for a trust to have multiple unit holders.

## Introduction

11. This statement sets out the Commissioner's position on whether and when a unit trust can have a single unit holder. Determining whether a trust is a "unit trust" for income tax purposes is important as the tax treatment is different. Unit trusts are treated as companies for income tax purposes; whereas other trusts are subject to the trust rules.

12. The commentary to BR Pub 95/5A: "Relationship between the "unit trust" and "qualifying trust" definitions" (*Tax Information Bulletin* Vol 8, No 10 (December 1996): 15) included the following statement:

The [unit] trust must have more than one unit holder. The use of the plural when referring to "subscribers, purchasers, or contributors" in the definition [of unit trust] supports this interpretation.
13. BR Pub 95/5A and its commentary were concerned with the issue of whether a unit trust is taxed as a trust or a company. The issue arose because a unit trust could potentially be within the definition of "qualifying trust" and also treated as a company under the Act. The ruling concluded that the company rules apply. The statement that the definition of "unit trust" requires more than one unit holder was not central to the discussion and conclusion. However, it does represent the Commissioner's published view on that point.
14. BR Pub 95/5A applied from the 1997/98 income year to the 1999/2000 income year. In *Tax Information Bulletin* Vol 12, No 5 (May 2000): 4, the Commissioner stated:

The Commissioner has determined that upon expiry the above-referenced public ruling [BR Pub 95/5A] will not be re-issued.

It is considered that the legislation on the subject matter covered by the ruling is clear.

The non-renewal of the ruling should not be taken as indication of change to the interpretation of the legislation as set out in the ruling. The Commissioner's view on the issue remains the same.
15. The Commissioner has been asked to reconsider whether a unit trust requires more than one unit holder and when this is possible. To the extent that BR Pub 95/5A (in conjunction with the above TIB statement) suggests that a unit trust is required to have more than one unit holder, this no longer represents the Commissioner's view. This interpretation statement sets out the Commissioner's view on this issue.

## Analysis

16. Unit trusts are a type of trust. They can be set up at law and are not created by any legislation. However, there is legislation that applies to tax and regulate them. The commercial understanding of unit trusts is that they are a means for small investors to pool their funds to earn a potentially greater return than investing individually.
17. Unit trusts were first regulated in New Zealand with the enactment of the Unit Trusts Act 1960. Changes were made to the income tax legislation to explicitly provide for the treatment of unit trusts around the same time. The Act taxes unit trusts as companies rather than as trusts. Units are treated as shares and unit holders as shareholders.
18. This statement will consider three issues:
  - whether a unit trust always needs more than one unit holder;
  - whether a unit trust requires facilities for multiple unit holders or whether facilities for a single unit holder are sufficient (s 33 of the Interpretation Act 1999); and
  - when a trust with a single unit holder will be a unit trust.

## Whether a unit trust always needs more than one unit holder

19. If a unit trust is always required to have multiple unit holders, then a trust could never be a unit trust while it had only a single unit holder (whether permanently or at a particular point in time).

20. "Unit trust" is defined in s YA 1 as follows:

### **unit trust—**

- (a) means a scheme or arrangement that is made for the purpose or has the effect of providing facilities for subscribers, purchasers, or contributors to participate, as beneficiaries under a trust, in income and capital gains arising from the property that is subject to the trust; ...

For ease of reading, this statement will often just refer to "subscribers" as shorthand for "subscribers, purchasers or contributors".

21. Paragraph (b) of the definition contains a number of specific exclusions from the definition that are not relevant here.

22. There is nothing in the wording of the definition of "unit trust" that requires a unit trust to, in fact, have more than one unit holder. Rather, the trust scheme or arrangement must be "made for the purpose" or "have the effect" of **providing facilities** for subscribers (to participate as beneficiaries in income and gains from the trust property).

23. However, the portfolio investment entity (PIE) rules contain provisions that suggest that multiple unit holders may, in fact, be necessary to be a "unit trust" as defined. Section HM 3(1) relevantly states:

### **HM 3 Foreign PIE equivalents**

#### *General definition*

(1) A **foreign PIE equivalent** means an entity that—

...

(b) is—

...

- (iii) the trustee of a trust that would be a unit trust if it had more than 1 subscriber, purchaser, or contributor participating as beneficiaries under the trust; and

...

24. Similarly, s HM 9(c) relevantly states:

### **HM 9 Collective schemes**

The entity must be—

...

- (c) the trustee of a trust that would be a unit trust if there were more than 1 subscriber, purchaser, or contributor participating as beneficiaries under the trust:

25. The use of the phrase "that would be a unit trust if there were more than 1 subscriber, purchaser, or contributor" suggests that these sections were drafted based on the assumption that a unit trust must have two or more subscribers (rather than merely facilities for them).

26. Against this, it can be argued that an inference cannot be drawn about the definition of "unit trust" from the wording used in these other provisions. Arguably, the approach used in ss HM 3(1)(b)(iii) and HM 9(c) (with reference to subscribers) does not modify the definition of "unit trust". Rather, the sections could be read as asking for an assumption to be made as to the number of subscribers in the context of the PIE rules, with no bearing on the interpretation of

the definition of “unit trust”. This is particularly so, given that the words of the definition seem to be satisfied simply with facilities for many subscribers.

27. Another argument against inferring anything from these provisions is that, in drafting and enacting this legislation, it is likely Parliament and the drafters had in mind the Commissioner’s published position in BR Pub 95/5A. If that is the case, not much can be drawn from these words about the correct interpretation of the definition of “unit trust”. Case law has established that if Parliament makes a mistaken assumption about the law, this is not enough to make that interpretation the law – *IRC v Dowdall O’Mahoney & Co Ltd* [1952] AC 401 (HL), *Birmingham City Corp v West Midland Baptist (Trust) Association (Inc)* [1970] AC 874 (HL), and *West Coast ENT Incorporated v Buller Coal Ltd & Ors* [2013] NZSC 87.
28. In the Commissioner’s view, these provisions in the PIE rules should not be read as suggesting that a unit trust is required to have multiple unit holders. A scheme or arrangement can be made for the purpose or have the effect of providing facilities for multiple subscribers to participate even where only one subscriber is currently participating. The circumstances where this is possible will be considered later.

### **Whether a unit trust requires facilities for multiple unit holders or whether facilities for a single unit holder are sufficient (s 33 of the Interpretation Act 1999)**

29. The next issue that will be considered is whether s 33 of the Interpretation Act 1999 (the IA 99) means that a trust with facilities for only a single unit holder can be a unit trust. If s 33 applies in this way then a trust that can only ever have a single unit holder could still be a unit trust.
30. Section 4 of the IA 99 provides that the IA 99 applies to New Zealand acts unless the particular act provides otherwise, or unless the context otherwise requires (see also s AA 3(2) of the Income Tax Act 2007). Relevantly, s 33 of the IA 99 contains a rule concerning numbers (the numbers rule):

#### **33 Numbers**

Words in the singular include the plural and words in the plural include the singular.

31. Therefore, unless the context requires a different interpretation, words in the Income Tax Act in the singular include the plural and words in the plural include the singular.
32. The result of substituting the singular for the plural in para (a) of the definition of “unit trust” is as follows:

#### **unit trust—**

- (a) means a scheme or arrangement that is made for the purpose or has the effect of providing [a facility] for [a subscriber], [purchaser], or [contributor] to participate, as [a beneficiary] under a trust, in income and capital gains arising from the property that is subject to the trust;

33. The issue is whether the context requires that the words in the plural in the definition not include the singular. The numbers rule is a useful drafting tool that assists the legislature to avoid cumbersome wording. However, the numbers rule does not always apply. It is, therefore, necessary to consider how case law has applied the numbers rule.
34. There are a number of cases that consider s 33 of the IA 99 and its international equivalents. The leading case is *Blue Metal Industries v Dilley* [1969] 3 All ER 437 (PC). Other cases include *Sin Poh Amalgamated (H.K) Ltd* [1965] 1 All ER 225 (PC), *Case F25* (1983) 6 NZTC 59,674, *Alliance Group Ltd v CIR* (1995) 17 NZTC 12,066 (HC), *CIR v Nicholson* [2005] NZFLR 385 (HC), *McDonald & Anor v Australian Guarantee Corporation (NZ) Ltd* [1990] 1 NZLR 227 (HC), *R v Cara*

[2005] 1 NZLR 823 (HC), *R v K* [1995] 3 NZLR 159 (CA) and *Floor v Davis* [1979] 2 All ER 677 (HL).

35. The following principles can be drawn from the case law:
- The question is ultimately one of statutory interpretation – did Parliament intend for the words in a provision to be read in the singular or plural? Accordingly, the purpose of the provision, its text and its context in the enactment are all relevant.
  - A contrary intention would appear if the application of the numbers rule would change the policy underlying the legislation.
  - If there is a careful choice between the use of singular and plural expressions, that would suggest there is a contrary intention to reading words in the singular to include the plural (and vice versa).
  - The effect of applying the numbers rule to the particular provision must be considered. If the application produces uncertainties in the provision's application, or suggests that the drafter would have drafted parts of the provision differently if the inclusion of the plural or singular had been intended, then this is evidence of a contrary intention.
  - In considering whether the context requires departure from the numbers rule, a broad range of intrinsic and extrinsic material can be considered.
36. In summary, the case law on the numbers rule establishes that the rule applies in the present case if, when examining the purpose and context of the "unit trust" definition, we can conclude that Parliament would have intended to include the singular, but wanted to avoid cumbersome wording. If, however, the purpose of the legislation suggests that the use of the plural was deliberate, the numbers rule will not apply.
37. The scheme and purpose of the unit trust provisions are considered in greater detail below. However, a summary of the relevant points is set out here.
38. The "unit trust" definitions in the Income Tax Act and the Unit Trust Act were introduced in 1960 to deal with the practical matters around the regulation and operation (including tax) of unit trusts. In particular, the income tax rules were Parliament's response to pre-existing unit trusts, which were a form of trust that operated in New Zealand prior to the enactment of this law. It can be inferred that the definition chosen was designed to describe the essential attributes of such trusts.
39. As discussed in more detail later, the unit trust regime in the Income Tax Act was enacted to ensure that investors could not use unit trusts to avoid the two levels of taxation that were imposed on companies under the classical system of taxation (income tax was imposed at both the entity level and the investor level). At the time, the companies legislation required companies to have more than one shareholder.
40. In summary, a unit trust was widely understood as being a collective investment vehicle and it is reasonable to assume that the collective nature of such trusts was therefore intentionally reflected in their definitions. This is also supported by discussion in the *NZ Parliamentary Debates* at the time the Income Tax Act and Unit Trust Act provisions were being enacted. At the time, there were only four unit trusts in New Zealand and these were all widely-held investment vehicles.
41. Further, it is noted that there still appears to be a common view amongst commentators as to the purpose and features of unit trusts. For example, Edna Carew *The Language of Money* (George Allen & Unwin, Sydney, 1996) seems indicative of the material on this point. It states that a unit trust is structured to

allow small investors to pool their money, which enables them to earn a greater return than if each investor had acted individually.

42. Given this it seems reasonable to conclude that the type of trusts Parliament was concerned with at the time of enactment of the unit trust legislation were collective investment vehicles, ie, multi-unit-holder trusts that had the attributes found in the definition. In short, trusts that, through their constituting documents, enable a group of investors (subscribers, purchasers, or contributors) to participate (as a group of beneficiaries) in the income and capital gains arising from the trust property. As a collective investment vehicle, it was usual for an initial subscriber to subscribe for a unit, which had the effect of settling trust property, and then for the unit trust manager to seek investments from either the public or private investors.
43. In the Commissioner's view, there is a significant practical difference between a trust with facilities for multiple investors to participate in the income and capital gains arising out of trust property and a trust where such a facility is restricted to a single investor (in the sense that the way it is set up only allows for a single investor). The unit trust provisions were clearly aimed at unit trusts with facilities for multiple investors. In the Commissioner's view, Parliament would not have contemplated or intended the "unit trust" definition to apply to a trust that was restricted to a single subscriber. Such a vehicle was not within the general understanding of a unit trust at the time. Nor would it have been a substitute for a company at the time (as companies required multiple shareholders).
44. Consequently, it is the Commissioner's view that the numbers rule does not apply to the "unit trust" definition. Therefore, a unit trust must provide facilities for multiple subscribers to meet the Income Tax Act definition. The circumstances where a unit trust will have such facilities are considered next.

### **When a trust with a single unit holder will be a unit trust**

45. The following analysis will first consider the requirement that a "unit trust" be a "trust". It will then consider the meaning of "facilities", followed by the meaning of "subscribers, purchasers, or contributors". Lastly it will consider the meaning of "made for the purpose or has the effect". In particular, it will consider whether that phrase is satisfied by examining whether the legal relationships provide facilities for multiple unit holders, or whether there must also be an intention to have multiple unit holders.

### ***Analysis of the words of the "unit trust" definition***

#### *Trust*

46. There must be a "trust" for the definition of "unit trust" to apply. "Trust" is defined in s YA 1:

**trust**, in the definitions of **superannuation scheme** and **unit trust**, has the meaning given by the Trustee Act 1956.

47. The definition of "trust" in the Trustee Act 1956 does not define a trust. Instead, the definition sets out specific inclusions and exclusions from the definition. Therefore, it is necessary to turn to the common law for the meaning of "trust". Greg Kelly and Chris Kelly in *Garrow and Kelly Law of Trusts and Trustees* (7th ed, LexisNexis, Wellington, 2013) define a "trust" at p 3 as follows:

A trust is an equitable obligation under which a person (the 'trustee') has control of property but is bound to deal with that property either:

- (a) for the benefit of definite persons (that trustee may be one of them) and any one of them may enforce the obligation; or
- (b) for some object or purpose permitted by law.

48. There are four essential elements of a trust. There must be a trustee, trust property and a beneficiary, and the trustees must have an obligation to deal with the trust property for the benefit of the beneficiaries (see *Garrow and Kelly Law of Trusts and Trustees* at p 8).

#### *Facilities*

49. The *Oxford English Dictionary* (online ed, 3rd ed, Oxford University Press, accessed 22 January 2016) (OED) contains no separate entry for “facilities” but provides the following relevant definitions for “facility”:

**facility, n.**

2.

a. Opportunity, esp. of an unlimited kind, to do something; capability, ability, provision; an instance of this. Also with for, of.

b. Freq. in pl. Favourable conditions or circumstances for the easy or easier performance of something. Also in sing., esp. in **every facility**.

c. orig. U.S. In pl.: the physical means or equipment required for doing something, or the service provided by this; freq. with modifying word, as **educational facilities, postal facilities, retail facilities**, etc. In sing.: a service or feature of a specified kind; (also) a building or establishment that provides such a service.

50. There do not seem to be any relevant cases on the meaning of “facilities”. From the dictionary definition, the word “facilities” in the definition of “unit trust” might be said to refer to the provision of an opportunity or ability for subscribers to participate in the income and capital gains of the trust.
51. The definition of “unit trust” does not specify any particular requirements as to the form of the facilities. However, the Act gives some guidance as to what form is envisaged and, so, what facilities Parliament had in mind. The Act defines a “unit holder”, for a “unit trust”, as meaning “a person who holds a beneficial interest in the property that is subject to the trust” and defines a “share” to include “a unit in a unit trust”. In the context of the meaning of “unit trust”, for facilities to exist, a unit trust would be expected to provide a trust deed, trust property, a trustee and a trust manager. In addition, the beneficial interests in that trust property would be divided into units and those units would be able to be held by unit holders.

#### *Subscribers, purchasers, or contributors*

52. The Act does not define the words “subscribers”, “purchasers”, or “contributors”. Therefore, they should each be given their ordinary meaning as interpreted in light of the context.
53. The *Concise Oxford Dictionary* (12th ed, Oxford University Press, New York, 2011) (COD) states that the word “subscriber” is the noun derivative of the word “subscribe” and provides the following (relevant) definition of the word “subscribe”:

**subscribe v. 1** (usu. **subscribe to**) ... • contribute or undertake to contribute a sum of money to a project or cause • apply to participate in • apply for an issue of shares ...

54. The OED (accessed 22 January 2016) provides the following relevant meanings of “subscriber”:

**subscriber n.**

2.

a. A person who subscribes to a specified object or institution, the funds of a company, etc.

b. A contributor. Obs. nonce-use.

3.



a. A person who makes regular payment in return for entitlement to receive a periodical, membership of a society, access to a commercially provided service, etc.

55. "Subscriber" is, therefore, capable of different meanings. It can mean someone who has (or will) contribute money for something. It is also capable of a wider meaning such as a person who signs up or joins something, often, but not necessarily, for money.
56. Where courts are attempting to find definitions that reflect common usage in particular subject areas or sectors, they often refer to legal dictionaries. Legal dictionaries in the context of company and securities law show that the common commercial usage is the narrower one. That is a "subscriber" is a person that provides, or will provide, consideration. For example, see Stroud's Judicial Dictionary of Words and Phrases (8th ed, Sweet & Maxwell, UK, 2013) that states:
- SUBSCRIBE.** ... "Subscribe" very frequently means to pay money; and then it means (1) to have made an actual payment, or (2) to agree to contribute (Thames Tunnel Co v Sheldon, 6 B. & C. 341).
- And *Black's Law Dictionary* (10th ed, Thomson West, USA, 2014) provides:
- subscribe**, vb. ... 10. To agree to buy or pay for (shares, stock, etc)
57. The Commissioner considers that the common commercial usage of "subscriber" is to be preferred in the context of unit trusts. The Act treats "unit trusts" as companies and unit holders as shareholders in a company. Therefore, applying the commonly understood meaning of "subscriber" in a company law context seems appropriate. Further, as discussed in more detail below, when Parliament enacted both the Unit Trusts Act 1960 and added the "unit trust" definition to the Income Tax Act, unit trusts were understood to be investment vehicles. An interpretation that requires "subscribers" to give consideration is consistent with this. This interpretation is also consistent with the meaning of the terms "purchaser" and "contributor", both of which require the giving of consideration (see below).
58. The COD states that the word "purchaser" is the noun derivative of the word "purchase" and provides the following (relevant) definition of the word "purchase":
- purchase v. 1** buy (something) ... **n. 1** the action of buying ... • Law the acquisition of property by one's personal action rather than by inheritance.
59. The OED (accessed 22 January 2016) provides the following relevant meaning of "purchaser":
- purchaser, n.**
- 4.** A person who purchases something with money (or an equivalent); a buyer. Now the usual sense. Also fig. and in extended use.
60. The OED (2nd ed) (accessed 22 January 2016) provides the following relevant definition of "contributor":
- contributor, n.**
- a.** One that contributes or gives to a common fund; one that bears part in effecting a result.
61. Having regard to the dictionary definitions, the words "subscribers, purchasers, or contributors" in the definition of "unit trust" are used in the sense of meaning a person who provides money (or its equivalent) in exchange for receiving something of value. While there are variations in the meaning of the three terms, a trust only needs to have facilities for one of the types to be within the "unit trust" definition.
62. The requirement for "subscribers", "purchasers", or "contributors" is one of the key differences between a standard trust and a unit trust. Unit trusts provide subscribers with a means to enter and exit the trust through the ability to buy and sell units that represent a share in trust property. That ability can be contrasted

with trusts where the settlor determines the beneficiaries and those beneficiaries remain beneficiaries unless the trust comes to an end. The beneficiaries in a standard trust have limited ability to control the release of trust funds. Consequently, a discretionary trust will not be a "unit trust" even where the beneficiaries have settled property on the trust. In a "unit trust" it is the terms of the units that give unit holders the right to participate in income and capital gains arising from the trust property.

*Made for the purpose or has the effect*

63. The Act does not define the words "purpose" or "effect" or the expression "made for the purpose or has the effect".
64. The COD defines "made" as the past tense and past participle of "make". The verb "make" means:
  - 2 bring about or perform; cause • cause to be, become or seem
65. "Purpose" is defined as:
  - The reason for which something is done or for which something exists.
66. "Effect" is relevantly defined as:
  - 1 a change which is a result or consequence of an action or other cause.
67. The ordinary meaning of "purpose" can be interpreted as requiring an identification of the reasons why a unit trust is set up. This would include ascertaining the intention of those setting up the entity (and could include both objective and subjective considerations). This view is also supported by the use of the word "made". Grammatically, the sentence would make sense without the word "made", suggesting it was included for a purpose. Arguably, the word "made" alludes to the intention of those who set up or run the scheme or arrangement. Therefore, a scheme or arrangement "made for the purpose" of providing facilities for multiple investors is one where the reason for which the scheme or arrangement is undertaken is to provide facilities for multiple investors.
68. The ordinary meaning of "effect" is what has been achieved. Therefore, in the context of the meaning of the term "unit trust", a scheme or arrangement that results in the provision of facilities for multiple investors to participate in the income or capital gains arising from the trust property is a trust that has the required effect.
69. An alternative view is that "made for the purpose or has the effect" should be read as a composite phrase. This would be a purely objective test that looks at whether the requisite facilities exist. Support for this view can be found in case law on the words "purpose" and "effect" in another context. In New Zealand's tax avoidance jurisprudence, the meaning of the phrase "purpose or effect" and the approach to determining the "purpose or effect" of an arrangement is settled law. "Purpose", in the context of tax avoidance, means the intended effect the arrangement seeks to achieve and not the motive of the parties. The courts have distinguished between purpose and effect by referring to the purpose of the arrangement as the "**intended** effect" (*Ashton v CIR* (1975) 2 NZTC 61,030 (PC)) or the purpose as "the effect which [the arrangement] **sought** to achieve" (*Tayles v CIR* (1982) 5 NZTC 61,311 (CA)). "Effect" means the end accomplished or achieved by the arrangement. Although there are these subtle differences in meaning, in almost all cases the purpose and effect of an arrangement will be the same. The intended aim of the arrangement (the objective purpose), if successfully achieved, will be the arrangement's effect.
70. Tax avoidance cases on these words are clear that the purpose of an arrangement must be determined objectively. The subjective motives and purposes of the

parties are irrelevant. An arrangement's purpose is determined by considering (objectively) the effect it has had – what it has achieved – and its effect must be taken to have been the arrangement's purpose. In *Glenharrow Holdings Ltd v CIR* [2008] NZSC 116, (2009) 24 NZTC 23,236, the Supreme Court said:

[38] ...Once you put the purpose of the parties to one side and seek by objective examination to find the purpose of the arrangement, you must necessarily do that by considering the effect which the arrangement has had – what it has achieved – and then, by working backwards as it were from the effect, you are able to determine what objectively the arrangement must be taken to have had as its purpose.

71. The phrases "purpose or effect" and "made for the purpose or has the effect" are arguably materially indistinguishable. It is possible, therefore, that a court would construe the phrase "purpose or has the effect" in the definition of "unit trust" in the same way as it has construed the phrase "purpose or effect" in the definition of "tax avoidance arrangement". That is, it would do so by considering the objective features of the arrangement rather than the motivations of its participants.
72. In summary, the words "made for the purpose or has the effect" could be read as directing and confining the inquiry to the legal relationships entered into when the entity is established. Alternatively, they could be interpreted as requiring an examination of all the facts, including the intention of the settlor, trustees or managers. Avoidance law would potentially support the former approach. The two approaches are discussed in more detail below.

#### *Legal relationships test – only objective evidence*

73. This approach examines the legal relationships entered into, usually by looking at the establishing documents (and any other relevant documents) to see whether, objectively speaking, the entity provides facilities of the specified kind. A scheme or arrangement "made for the purpose" or "having the effect" of providing facilities for multiple subscribers is one where the scheme or arrangement is set up and undertaken, objectively speaking, to provide facilities for multiple subscribers to participate in the income or capital gains arising from the trust property.
74. When examining the tax treatment of a transaction, the first step is to ascertain the transaction's true nature (*Buckley & Young v CIR* (1978) 3 NZTC 61,271 (CA)). As was said in *Re Securitibank (No 2)* [1978] 2 NZLR 136 (CA), the true nature of a transaction can only be found by careful consideration of the legal arrangements actually entered into and carried out. In the case of a legal vehicle such as a unit trust, arguably this would generally be done by examining the documents that establish the unit trust. Therefore, determining whether the definition was satisfied would require an analysis of the scheme or arrangement to establish whether the legal rights and obligations created by it provide facilities of the necessary kind.
75. Under this approach, the relevant inquiry is not a factual one to determine whether, in practice, multiple persons are actually participating in the facilities provided. Therefore, an entity can be a unit trust within the definition if there is only one subscriber, provided there are facilities for multiple subscribers.

#### *The test should take account of intention*

76. The second approach looks not only at the legal relationships, but at all of the information available, particularly the intention of the settlor of the unit trust, and at what actually happens in practice. As discussed above, the use of the words "made for the purpose" arguably suggests that intention is relevant (although "effect" is less suggestive of intention).
77. This approach is based on the premise that the purpose or effect of a scheme or arrangement is not limited to the terms of the trust deed. Arguably, the effect of

the scheme or arrangement is its result, outcome, or end product. In certain situations, the fact that the trust deed says it is possible for the trust to have multiple subscribers participating will not be enough to establish that the arrangement is made for the purpose of multiple subscribers participating. Nor will it be enough to establish that the arrangement has the effect of enabling multiple subscribers to participate. This will be the case if an overall assessment of the facts establishes that no such opportunity for multiple subscribers to participate is actually provided (or intended to be provided) by the scheme or arrangement.

78. Therefore, under this approach, if a scheme or arrangement provides the requisite facilities for multiple subscribers and the facts establish that the intention is to operate as a vehicle for multiple subscribers, the entity will be a "unit trust" within the definition even if there is only one unit holder.

#### *Objective, intention and other factors*

79. A variation on the second approach is one that takes all the facts into account and includes intention as just one of the factors in reaching a view. Both the second approach and its variation start from the position that a unit trust is, in most cases, an investment vehicle for many subscribers. However, both contemplate that there may be instances when, for whatever reason, there is only one subscriber. In such circumstances, a decision has to be reached whether the trust comes within the "unit trust" definition. A court might consider such unit trusts within the definition if having one unit holder was not a permanent feature. Factors a court might consider include whether there was the prospect of more unit holders, whether there had been more unit holders in the past, whether measures had been taken by the trustees or manager to secure more subscribers, and whether there were commercial reasons why, at a particular time, there was only one unit holder. The settlor's intention in setting up the unit trust could be relevant too, as well as how reasonably held that intention was.

#### **Summary of analysis of the words of the "unit trust" definition**

80. There is nothing in the wording of the "unit trust" definition to suggest whether a legal relationships test or an intention test (or a combination of both) should be preferred. As set out above, the wording can be read consistently with either approach.
81. Next this statement will consider the legislative history and context to try and determine the purpose of the unit trust regime.

#### **Legislative history, context and purpose**

82. Section 5 of the IA 99 requires the meaning of the text of an enactment to be ascertained in the light of its purpose. In determining purpose, both the immediate and general legislative context are considered, and it may also be relevant to consider the social, commercial, or other object of the statute (*Commerce Commission v Fonterra Co-Operative Group Ltd* [2007] NZSC 36). It is helpful to begin by examining the legislative history of the "unit trust" definition.

#### *Introduction of the classical taxation system in 1958*

83. The Land and Income Tax Act 1954 (LITA 54) came into force on 1 April 1955. Section 86(1)(i) provided that dividends were exempt income for individuals and companies.
84. Section 6 of the Land and Income Tax Amendment Act (No 2) 1958 amended s 86(1)(i) of the LITA 54 by removing the exemption for dividends derived by an individual. In short, s 6 of the 1958 Amendment Act introduced the classical tax system of company taxation. Under the classical system, a company is taxed on

its income and individual shareholders are taxed on dividends received without reference to the tax paid at the company level on the same income.

85. The 1958 Amendment Act also introduced an excess retention tax. This was an anti-avoidance measure to counter companies retaining profits to avoid the dividend tax on individuals.
86. The introduction of the classical tax system for companies created a tax advantage for trusts and their beneficiaries because (unlike companies) they were taxed only once between them on the same income – either at the trustee or the beneficiary level (s 155 LITA 54).

#### *Enactment of "unit trust" definition in 1960*

87. The "unit trust" definition was inserted (as s 153B) into the LITA 54 in 1960 by s 20 of the Land and Income Tax Amendment Act 1960. As discussed below, the definition appears to originate from the definition of a "unit trust" in the Unit Trusts Act 1960. As originally enacted, the definition (in s 153B(1)) provided:

"Unit trust" means any scheme or arrangement, whether made before or after the commencement of this section, that is made for the purpose or has the effect of providing facilities for the participation, as beneficiaries under a trust, by subscribers or purchasers, in income and gains (whether in the nature of capital or income) arising from the money, investments, and other property that are for the time being subject to the trust; but does not include - ...

88. Section 153B(2) of the LITA 54 provided (among other matters) that for the purposes of the LITA 54:
  - every unit trust shall be deemed a company and the term "company" where used in the LITA 54 shall be deemed to be extended accordingly;
  - the interests of the unit holders in the unit trust shall be deemed to be shares in the company;
  - the unit holders shall be deemed to be shareholders in the company.
89. Deeming a unit trust to be a company meant the following:
  - The assessable income of the unit trust was subject to classical taxation. The income of the unit trust was taxed at the level of the unit trust (as a deemed company) and then taxed at the unit holder (shareholder) level on payment of a distribution (dividend).
  - A unit trust was subject to the loss carry forward rule for companies in s 137(3). In summary, the rule provided that the Commissioner must be satisfied that the shareholders of the company on the last day of the year in which the loss was incurred were substantially the same as the shareholders on the last day of the income year immediately preceding the year of assessment. Substantially the same meant not less than two-thirds of the paid-up capital and not less than two-thirds of the nominal capital had to be held by the same persons.
  - The excess retention tax provisions applied to unit trusts.
90. It seems reasonable to infer that deeming a unit trust to be a company was directed at the mischief of subscribers using unit trusts to avoid the impost of tax at both the company and shareholder level.

#### *Parliamentary debates – Land and Income Tax Amendment Bill 1960*

91. In introducing the Land and Income Tax Amendment Bill 1960 to the Whole House, the Minister of Finance observed that unit trusts had just developed in New Zealand. It was, therefore, necessary to have a provision to deal with them and

the proper way to do this was to treat them as companies – (7 September 1960) 324 NZPD 2156.

92. During the second reading, the Minister of Finance repeated that unit trusts had only come into operation in New Zealand earlier in the year (1960). He explained that it had been considered desirable to introduce legislation (the Unit Trusts Bill) dealing specifically with unit trusts to avoid some of the abuses that had arisen in connection with unit trusts in overseas countries – (7 October 1960) 324 NZPD 2846. The Minister then went on to explain the purpose of cl 20 of the Land and Income Tax Amendment Bill – (7 October 1960) 324 NZPD 2846:

This measure provides that unit trusts shall be treated as companies. Legislation has been passed in the United Kingdom this year providing that for taxation purposes unit trusts are to be treated as companies, the trustees are to be treated as directors, and the unit holders are to be treated as shareholders. Apparently they receive some allowance for management expenses without becoming liable for profits tax. Legislation [Unit Trusts Bill], as I have said, has already been introduced dealing with the general control of unit trusts. I would emphasise that this particular clause deals only with the taxation of these trusts, and in general the principle is that they will be treated as companies for the purpose of the law.

93. Opposition members were opposed to unit trusts being treated as companies. Their main reason was that interest income would be subject to classical taxation and this would discourage unit trusts from investing in Government stock and local body debentures and would result in unit trusts investing in company shares because of the inter-corporate dividend exemption.
94. It can be inferred from the Parliamentary debates that Parliament had a general understanding that unit trusts were similar to widely-held investment vehicles (ie, similar to public investment companies). The illustration of this is contained in a passage of the Hon J T Watts during the committee stage debate on the Unit Trusts Bill 1960, which Parliament was considering in parallel with the Land and Income Tax Amendment Bill 1960. That passage is set out at [103] below as part of the discussion of the Unit Trusts Act 1960.
95. It seems from the Parliamentary debates on the Land and Income Tax Amendment Bill 1960 that Parliament's primary concern was with the new development in New Zealand of the use of widely-held investment trusts. Parliament's purpose for the definition of a "unit trust" and the related provisions was for unit trusts to be taxed as companies rather than trusts. This was to ensure that unit trusts could not be used to avoid the double taxation of a company's investment income under the classical system and was based on a perceived similarity between companies and unit trusts as investment vehicles. In particular, both unit trusts and companies involve the member providing money to the vehicle in return for an interest (ie, shares or units) in that vehicle's property and income.

*Income Tax Act 1976 – amendments to the definition of "unit trust"*

96. On enactment of the Income Tax Act 1976 (ITA 76), the definition of "unit trust" was in the same form as the LITA 54 definition.
97. From the income year commencing 1 April 1988, the definition was amended by s 22(1)(a) of the Income Tax Amendment Act (No 5) 1988 by substituting the words "subscribers, purchasers, or contributors" for the former words "subscribers or purchasers". The effect of the amendment was to expand the definition of "unit trust" to persons who were "contributors" to a unit trust.
98. The same amendment act inserted Part 4A (the foreign investment fund (FIF) regime) into the ITA 76. It seems that the intention behind expanding the definition of "unit trust" to include "contributors" was so that the FIF regime would apply to a person who contributed to a foreign unit trust where that unit trust was a superannuation scheme. The addition of the word "contributors" to the definition

does not seem to shed any light on when a scheme or arrangement will meet the definition of “unit trust” and, in particular, whether the provision of the requisite facilities should be determined by legal relationships only or whether intention is relevant.

99. The imputation system was introduced with effect from 1 April 1988 and replaced the classical tax system of company taxation. The imputation system allows companies (including unit trusts) to pass the full benefit of tax paid at the company level on to shareholders (unit holders) with their dividends (distributions). The replacement of the classical system substantially reduced the difference between companies and (non-unit) trusts from a taxation point of view. Relevantly, the imputation system largely removed the tax advantage previously enjoyed by (non-unit) trusts under the classical system. This is because, imputation had the effect in broad terms, that a company and its shareholders are taxed only once between them.
100. However, there are differences in the tax treatment of trusts and companies, so there continues to be relevant purpose considerations in reaching a view on how unit trusts are taxed. For example, there may be a benefit in using a trust where the top personal tax rate is higher than the trust tax rate (as the tax on income from a trust can be capped at the trust rate), or where a person’s marginal tax rate is lower than the company tax rate, or the person is exempt or in losses (due to the non-refundability of imputation credits). Some other rules in the Act also apply differently to trusts and companies.
101. Consequently, statutory purposes still exist in taxing unit trusts as companies rather than trusts post imputation, although these purposes are significantly less important than when the definition was introduced.

#### *The enactment of the Unit Trusts Act 1960*

102. As noted above, Parliament enacted the “unit trust” provisions into the LITA 54 in parallel with the enactment of the Unit Trusts Act 1960 (UTA 60). The Attorney General, in moving that the Unit Trusts Bill be committed to the Committee of the Whole House, explained that unit trusts were beginning to appear in New Zealand. He said that there was a positive duty on Parliament to take notice of the development and enact legislation to regulate unit trusts to protect the investing public from possible misconduct and unscrupulous or reckless management – (19 October 1960) 325 NZPD 3086–3088.
103. The comments of the Minister of Finance when introducing the Land and Income Tax Amendment Bill 1960 to the Whole House were referred to above. His comment was that unit trusts had just developed in New Zealand. During the committee stage debate on the Unit Trusts Bill 1960, the Hon J T Watts, the opposition member for Fendalton, said that he was personally interested in two unit trusts and explained that the drafting of the Bill had occurred over a 12 to 18 month period and that there were, at that time, four unit trusts in existence – (19 October 1960) 325 NZPD 3090:

The New Zealand legislation has been carefully drawn over the last year or 18 months. I saw an early draft of the Bill and made some comments on it, and those interested in promoting unit trusts gave their representations to the Justice Department. As a result, I think we have a practical Bill for regulating the operation of this form of investment. There are at present four unit trusts in existence – two in Wellington, one in Auckland, and one in Christchurch. As the House knows, for I disclosed it when discussing the Land and Income Tax Amendment Bill, I am connected with the two unit trusts in Wellington, in which over £1 million has been invested. That sum has come in to those two trusts in the last four or five months, and there are about 8,000 to 9,000 different investors having that amount of money invested in industry in New Zealand and Australia through these two trusts.

### *Similarity of the definitions*

104. The definition of "unit trust" in the LITA 54 is nearly identical to the definition of "unit trust" in the UTA 60. The one difference is that the UTA 60 definition requires that the scheme or arrangement have the purpose or effect of providing facilities for the participation by subscribers or purchasers as "members of the public". Under the Income Tax Act there is no reference to members of the public.
105. This distinction was noted in *Re Mortgage Management Ltd & Another* [1978] 1 NZLR 494 (SC) (the only reported New Zealand decision to consider the meaning of "unit trust" in the UTA 60). The court made some general comments about the definition of "unit trust", as well as a comment on the difference in wording between the UTA 60 definition and the definition for income tax purposes.
106. The relevant issue in that case was whether a contributory mortgage was a unit trust. The court observed, at 511, that the definition of "unit trust" in the UTA 60 had some resemblance to the definition of "unit trust" in the Prevention of Fraud (Investments) Act 1958 (UK). The UK Act defined "unit trust scheme" as:

any arrangements made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever.
107. The court made comments in passing about the tax implications. It stated that an implication of being a unit trust was that it would be taxed as if it were a company. This comment implied the court considered that an entity that was a unit trust under the UTA 60 would also be a unit trust under the definition in the Land and Income Tax Act. Barker J said that the tax definition was wider. At 512, his Honour observed that the reason for the omission of the words "members of the public" from the definition of "unit trust" in s 153B of the LITA 54 was not clear. Barker J said that this difference in wording could mean that something that was not a "unit trust" under the UTA 60 might still be a "unit trust" for taxation purposes.
108. The difference in the definition can most likely be explained by the different purposes of the two Acts. The UTA 60 was enacted as a means to protect investors. Private unit trusts (that do not seek funds from the public) do not have the same risk to investors. On the other hand, the purpose of the Income Tax legislation treatment of unit trusts was to prevent tax avoidance opportunities that arose from using unit trusts instead of companies. It makes sense to include private unit trusts in this as the tax avoidance risk is as great (if not greater) than for public unit trusts.
109. For completeness, it is noted that the UTA 60 was repealed by the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70). Unit trusts will now be regulated by the Financial Markets Conduct Act 2013.

### *Current legislative context (the context of the Income Tax Act)*

110. Unit trusts do not have their own regime in the Act. Therefore, few provisions concerned exclusively with unit trusts exist that can be analysed to assist in understanding Parliament's purpose. Instead, as already mentioned, unit trusts are included in the definition of "company", and so the rules applying to companies apply to unit trusts.
111. As noted above from [23], some provisions in the PIE rules suggest a trust must have multiple, actual unit holders, rather than mere facilities for unit holders. However, it has been concluded that the definition of "unit trust" does not require a trust to, in fact, have multiple unit holders.



112. In the Commissioner's view, nothing in the general legislative context assists with determining whether a legal relationships approach or an approach that takes account of intention should be preferred.

***Purpose considerations – summary and conclusion***

113. It appears that Parliament did not turn its mind to whether the provision of facilities for multiple subscribers should be tested solely by the legal relationships established/entered into or should also take account of intention. At the time, unit trusts were seen as large investment vehicles, so it is unlikely that a unit trust with a single unit holder was envisaged (except maybe when a new unit trust was starting up).
114. In considering the purpose of the legislation, it is relevant to identify any mischief Parliament intended to overcome by enacting the provisions. When originally enacted in 1960, the purpose of the definition was to prevent subscribers using unit trust structures (in the place of investment companies) to avoid the classical system of taxation that applied to companies.
115. An interpretation that looks only at legal relationships seems to be slightly more consistent with the anti-avoidance purpose of the "unit trust" definition at the time it was enacted. Also requiring evidence of a current intention to have multiple unit holders would have made it easier to avoid the application of the company provisions. However, this is not a particularly strong indicator, especially given the lack of single unit holder unit trusts at the time.
116. In the Commissioner's view, the most helpful indicator of purpose in this context is the workability of the different interpretations. There is a presumption that Parliament intends to legislate in a manner that produces a practical, workable, and sensible result (*The Laws of New Zealand Statutes* (online ed, accessed 22 January 2016) at [177]). A statute must, if possible, be construed in the sense that makes it operative and that does not defeat the manifest intentions of the legislature. In cases where a provision may have several possible meanings, the courts look for the one that produces a practical result. Examples of cases where this presumption has been applied include *CIR v Alcan New Zealand Ltd* (1994) 16 NZTC 11,175 (CA); and *Frucor Beverages Ltd v Rio Beverages Ltd* [2001] 2 NZLR 604 (CA).
117. An interpretation that considers only legal relationships means that a unit trust that satisfies the test will always do so (barring any change to its trust deed). It is also easy to determine whether a trust provided facilities for multiple unit holders by looking at the legal arrangements.
118. On the other hand, intention can change over time. Therefore, an interpretation that takes account of intention could mean that a trust falls in and out of the unit trust regime as intentions change. It may also be difficult to determine whether the requisite intention exists at any given time – making the test potentially difficult to apply. It seems unlikely that this would have been Parliament's intention when enacting the provision.
119. The results seem even more likely to be outside Parliament's purpose when thinking about the tax consequences. A unit trust that no longer met the definition would forfeit any imputation credits and other company-specific tax entitlements. Further, it could result in a continuity loss, as the trust would no longer be looked through to its ultimate owners upon ceasing to be a unit trust. Such an outcome is arguably not sensible or workable.
120. Consequently, on balance, the Commissioner's view is that the purpose of the "unit trust" definition is most consistent with a legal relationships test.

## Conclusion

121. This statement considers whether and when a unit trust can have a single unit holder. The conclusions reached are set out in the following paragraphs.
122. First, a unit trust does not need to, in fact, have multiple unit holders. Instead, a unit trust must only have **facilities** for multiple unit holders.
123. Second, the numbers rule in s 33 of the IA 99 does not apply. If the numbers rule applied, the plural elements of the definition of "unit trust" could be read as including the singular. This would mean that a trust that provided for only a single unit holder could be within the definition. However, in the Commissioner's view such an interpretation would be inconsistent with Parliament's purpose when it enacted the definition. Consequently, facilities for multiple unit holders are required for a trust to be a unit trust.
124. Finally, whether a trust provides facilities for multiple unit holders to invest should be determined by considering the legal relationships governing the trust – most importantly, the trust deed. Under this interpretation, the essential feature of a "unit trust" is the provision of the facilities for subscribers to participate, and that is not altered by there being only one subscriber.

## Example

125. The following example is included to assist in explaining the application of the law.

### Example: Trust deed provides for multiple unit holders

126. XYZ Ltd wanted to set up a unit trust that its employees could invest in. It sought expressions of interest from employees. Initially only one employee, Melvin, wished to invest. He subscribed for 10,000 units at \$1 each. The XYZ Unit Trust was established by a trust deed between XYZ Ltd and the Trustee.
127. The trust deed provides that the trustee may from time to time issue additional units to any employee of XYZ Ltd – the cost of those units being calculated based on the value of the existing units at the date of application. Currently, Melvin remains the sole unit holder.
128. The XYZ Unit Trust is a "unit trust" for income tax purposes. The trust deed provides facilities for multiple subscribers to participate in the unit trust. The fact that there is currently only one investor does not matter.

## References

### Related rulings/statements

BR Pub 95/5A: "Relationship between the "unit trust" and "qualifying trust" definitions" *Tax Information Bulletin* Vol 8, No 10 (December 1996): 15

"Notice of non-renewal of public ruling BR Pub 95/5A" *Tax Information Bulletin* Vol 12, No 5 (May 2000): 4

### Subject references

Income tax, unit trust

### Legislative references

Income Tax Act 1976: s 211(1) definition of "unit trust"

Income Tax Act 2007: ss HM 3, HM 9, YA 1 definitions of "company", "trust", "unit holder", "unit trust"

Interpretation Act 1999: ss 4, 5, 33

Land and Income Tax Act 1954: ss 86(1)(i), 137, 153B

Unit Trusts Act 1960: s 2(1) definition of "unit trust"

### Case references

*Alliance Group Ltd v CIR* (1995) 17 NZTC 12,066 (HC)

*Ashton v CIR* (1975) 2 NZTC 61,030 (PC)

*Birmingham City Corp v West Midland Baptist (Trust) Association (Inc)* [1970] AC 874 (HL)

*Blue Metal Industries v Dilley* [1969] 3 All ER 437 (PC)

*Buckley & Young v CIR* (1978) 3 NZTC 61,271 (CA)

*Case F25* (1983) 6 NZTC 59,674  
*CIR v Alcan New Zealand Ltd* (1994) 16 NZTC 11,175 (CA)  
*CIR v Nicholson* [2005] NZFLR 385 (HC)  
*Commerce Commission v Fonterra Co-Operative Group Ltd* [2007] NZSC 36  
*Floor v Davis* [1979] 2 All ER 677 (HL)  
*Frucor Beverages Ltd v Rio Beverages Ltd* [2001] 2 NZLR 604 (CA)  
*Glenharrow Holdings Ltd v CIR* [2008] NZSC 116, (2009) 24 NZTC 23,236  
*IRC v Dowdall O'Mahoney & Co Ltd* [1952] AC 401 (HL)  
*McDonald & Anor v Australian Guarantee Corporation (NZ) Ltd* [1990] 1 NZLR 227 (HC)  
*R v Cara* [2005] 1 NZLR 823 (HC)  
*R v K* [1995] 3 NZLR 159 (CA)  
*Re Mortgage Management Ltd & Another* [1978] 1 NZLR 494 (SC)  
*Re Securitibank (No 2)* [1978] 2 NZLR 136 (CA)  
*Sin Poh Amalgamated (H.K) Ltd* [1965] 1 All ER 225 (PC)

*Tayles v CIR* (1982) 5 NZTC 61,311 (CA)  
*West Coast ENT Incorporated v Buller Coal Ltd & Ors* [2013] NZSC 87.

#### **Other references**

*Concise Oxford Dictionary* (12th ed, Oxford University Press, New York, 2011)  
Edna Carew *The Language of Money* (George Allen & Unwin, Sydney, 1996)  
Greg Kelly and Chris Kelly in *Garrow and Kelly Law of Trusts and Trustees* (7th ed, LexisNexis, Wellington, 2013)  
*The Laws of New Zealand Statutes* (online ed) (7 September 1960) 324 NZPD 2156.  
(7 October 1960) 324 NZPD 2846  
(19 October 1960) 325 NZPD 3086  
(19 October 1960) 325 NZPD 3090  
*Oxford English Dictionary* (online ed, 3rd ed, Oxford University Press)

## Appendix – Legislation

### Income Tax Act 2007

1. Section YA 1 includes the following definitions:

**company –**

...

(b) includes a unit trust:

...

**trust**, in the definitions of **superannuation scheme** and **unit trust**, has the meaning given by the Trustee Act 1956

...

**unit holder**, for a unit trust, means a person who holds a beneficial interest in the property that is subject to the trust

**unit trust –**

(a) means a scheme or arrangement that is made for the purpose or has the effect of providing facilities for subscribers, purchasers, or contributors to participate, as beneficiaries under a trust, in income and capital gains arising from the property that is subject to the trust; and

(b) does not include—

(i) a trust for the benefit of debenture holders:

(ii) the Common Fund of Public Trust:

(iii) a group investment fund established by Public Trust:

(iv) the Common Fund of the Maori Trustee:

(v) a group investment fund established under the Trustee Companies Act 1967:

(vi) a friendly society registered under the Friendly Societies and Credit Unions Act 1982:

(vii) a superannuation fund:

(viii) an employee share purchase scheme:

(ix) a fund that meets the requirements of section CW 45 (Funeral trusts):

(x) any other trust of any specified kind that is declared by the Governor-General, by Order in Council, not to be a unit trust for the purposes of section HD 13 (Unit trusts)

### Interpretation Act 1999

2. Section 4 provides:

**4 Application**

(1) This Act applies to an enactment that is part of the law of New Zealand and that is passed either before or after the commencement of this Act unless—

(a) the enactment provides otherwise; or

(b) the context of the enactment requires a different interpretation.

(2) The provisions of this Act also apply to the interpretation of this Act.

3. Section 5 provides:

**5 Ascertaining meaning of legislation**

(1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.

- (2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.
- (3) Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

4. Section 33 provides:

**33 Numbers**

Words in the singular include the plural and words in the plural include the singular.