

The Treasury

Foreign Trust Inquiry Information Release

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[2]	to protect the privacy of natural persons, including deceased people	9(2)(a)
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[4]	to maintain the effective conduct of public affairs through the free and frank expression of opinions	9(2)(g)(i)
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Tax policy report: Foreign trusts: information and record keeping requirements

Date:	7 February 2005	Priority:	High
Security Level:	Sensitive	Report No:	T2005/160 PAD2005/022

Action sought

	Action Sought	Deadline
Minister of Finance and Revenue	Agree to recommendations	14 February 2005
Associate Minister of Finance (Hon Trevor Mallard)	For your information	None
Associate Minister of Finance and Revenue (Hon David Cunliffe)	For your information	None

Contact for telephone discussion (if required)

Name	Position	Telephone
Michael Nutsford	Portfolio Manager	474 7169 (wk) [2]
[4]		

7 February 2005

Minister of Finance and Revenue

cc: Associate Minister of Finance (Hon Trevor Mallard)

Associate Minister of Finance and Revenue (Hon David Cunliffe)

Foreign trusts: Information disclosure and record keeping requirements

Executive summary

We last reported to you on the foreign trust proposal on 10 September 2004 following the first round of consultation. As all submitters were opposed to the initial proposal, you agreed that officials should undertake further consultation to develop a proposal which would ensure that New Zealand could meet its international commitments while allowing the foreign trust industry to develop in New Zealand.

We subsequently developed an amended proposal and invited interested parties to provide submissions. Twenty submissions were received. Many of the submitters supported aspects of the amended proposal but raised specific concerns or suggested ways that it could be further improved. Where appropriate, our final policy recommendations address submitters' concerns.

We consider that tax legislation should be amended to require a New Zealand resident trustee of a foreign trust to:

- provide limited information to Inland Revenue upon appointment as trustee, or upon the enactment of the proposed amendments in relation to existing appointments;
- keep financial records relating to a foreign trust and provide this information to Inland Revenue if requested; and

- satisfy a requirement for membership of a professional body that is acceptable to Inland Revenue (such as an accounting or legal body).

If a New Zealand resident trustee fails to satisfy the requirement for membership of an acceptable professional body, we propose that they be subject to a penalty for non-compliance. Inland Revenue will advise the trustee of their intention to prosecute for non-compliance with the membership requirement.

If the trustee fails to become a member of an acceptable professional body or has a co-trustee appointed who meets the requirements within 30 days of receiving notice from Inland Revenue, the worldwide income of the trust will be treated as trustee income and taxed at 33%. If the trustee becomes a member during this period, Inland Revenue may consider dropping the prosecution and will not tax the foreign trust on its worldwide income.

We propose that a temporary exemption from the proposed requirements be allowed for New Zealand resident trustees who are new migrants, and for those who have not been resident in New Zealand for a period of at least five years prior to their arrival. The exemption would apply for two years from the date that a trustee of a foreign trust becomes a New Zealand resident.

This exemption is intended to temporarily exclude from the proposed requirements, non-resident trustees who become New Zealand residents, and expatriates who are appointed trustee of a foreign trust while in New Zealand, but will return home after a temporary stay. If a trustee is still resident in New Zealand at the end of the two year period, the proposed requirements will apply.

We propose that Inland Revenue provide automatically to the Australian Taxation Office (ATO) information relating to foreign trusts that have a New Zealand resident trustee and an Australian resident settlor. The ATO has indicated that this proposal will assist them.

Information would be provided to New Zealand's other double tax agreement (DTA) partners on a case-by-case request basis, when Inland Revenue receives a valid request for such information.

We consider that the implementation of the proposal outlined in this report would allow New Zealand to meet its international commitments and DTA obligations and maintain and continue to develop an on-going favourable relationship with Australia. It would also allow for the continuation and development of the foreign trust industry in New Zealand.

Recommended action

We recommend that you:

- (a) **Agree** that tax legislation be amended to require a New Zealand resident trustee of a foreign trust to:
- provide limited information to Inland Revenue;
 - keep financial records relating to a foreign trust and provide this information to Inland Revenue if requested; and
 - satisfy a requirement for membership of a professional body that is acceptable to Inland Revenue.

Agreed/Not agreed

- (b) **Agree** that failure by a New Zealand resident trustee to satisfy the requirement for membership of a professional body that is acceptable to Inland Revenue shall, following notice by Inland Revenue that they will be prosecuted for non-compliance, result in a foreign trust being taxed in New Zealand on its worldwide income, if the requirement is not satisfied within 30 days.

Agreed/Not agreed

- (c) **Agree** to allow an exemption from the proposed requirements in (a) for New Zealand resident trustees who are temporarily resident in New Zealand. The exemption will apply for two years from the date that a trustee of a foreign trust becomes a New Zealand resident.

Agreed/Not agreed

- (d) **Note** that Inland Revenue will provide automatically to the ATO on an annual basis, information relating to foreign trusts that have an Australian resident settlor. Information will be provided to New Zealand's other double tax agreement partners on a case-by-case request basis, when Inland Revenue considers the request is valid.

Noted

- (e) **Note** the administrative cost of implementing the proposal is estimated to be \$45,000 (GST inclusive) in the 2006-07 income year. The operating cost is estimated to be \$20,000 per annum (GST inclusive) in 2007-08 and subsequent income years. Inland Revenue will meet these costs within existing baselines.

Noted

- (f) **Agree** that the proposed amendments should apply from the income year commencing 1 April 2006.

Agreed/Not agreed

- (g) **Agree** that the proposed amendments be included in the tax bill scheduled for introduction in May 2005.

Agreed/Not agreed

Stephen Glover
for Secretary to the Treasury

Michael Nutsford
Portfolio Manager
Inland Revenue Department

Hon Dr Michael Cullen
Minister of Finance and Revenue

Background

1. Under current tax law, the New Zealand resident trustee of a foreign trust (being a trust that has no New Zealand resident settlor) that does not derive New Zealand sourced income is not required to provide information to Inland Revenue or keep records for New Zealand tax purposes. Consequently, there is a risk that New Zealand may be unable to supply its DTA partners with information relating to certain foreign trusts if requested. This is of considerable concern to Australian tax authorities.
2. In a report dated 17 June 2004 (T2004/957, PAD2004/092 refers) we recommended that the Tax Administration Act 1994 be amended to impose certain record keeping and filing requirements on all New Zealand resident trustees of foreign trusts. On 27 July 2004 you released a media statement to publicly announce the proposed changes. Officials invited interested parties to provide submissions on the proposal.
3. We reported to you again on 10 September 2004 (T2004/1673, PAD2004/192 refers) following the first round of consultation. All submitters opposed the initial proposal. Most indicated that implementation of the proposal would damage or destroy the foreign trust industry in New Zealand. Consequently, we recommended that further consultation be undertaken to develop an amended proposal, which would ensure that New Zealand could meet its international commitments while allowing the foreign trust industry to develop in New Zealand. On 23 September 2004 you released a second media statement to provide comfort to the foreign trust industry.
4. In November 2004, officials invited interested parties to provide submissions on an amended proposal for foreign trusts. This report discusses the key issues raised in those submissions and makes final policy recommendations.

Policy framework

5. In our last report to you we outlined a policy framework for foreign trusts. The purpose of the framework was to help us assess New Zealand's current position and assist in the development of an appropriate policy response.
6. Under that framework, any proposal should allow New Zealand to:
 - meet its obligations as a member of the international community and international organisations;
 - meet its obligations as a signatory to 29 DTAs which require information to be exchanged between signatory countries;
 - meet its obligations toward, and to continue to develop an on-going favourable relationship with Australia; and
 - allow for the continuation and development of the foreign trust industry in New Zealand.

7. We consider that the implementation of the proposal outlined in this report will allow New Zealand to achieve a balance between these obligations and objectives.

Amended proposal considered during last round of consultation

8. During the last round of consultation, we invited submissions on a proposal (referred to as the “amended proposal”) that would require a New Zealand resident trustee of a foreign trust to:

- provide limited information to Inland Revenue upon appointment as trustee of a foreign trust, or the enactment of the proposed legislation with regard to existing appointments (a trustee would also be required to state whether a settlor of the trust is a resident of Australia); and
- maintain certain records relating to the trust in New Zealand and provide this information to Inland Revenue on request.

9. In addition to these requirements, a New Zealand resident trustee would be required to be a member of a professional body that has a code of conduct and entry requirements and is acceptable to Inland Revenue (such as an accounting or legal body). In the case of a trustee company, a New Zealand resident director would be required to be a member of such a professional body.

10. If a New Zealand resident trustee failed to provide the required information to Inland Revenue, the worldwide income of the trust would be treated as trustee income and taxed at 33%. Trustees that did not maintain records or provide information when requested would be subject to prosecution and penalties.

Summary of submissions

11. Twenty submissions were received by, or shortly after, the closing date of 24 December 2004. A list of the submitters is attached.

12. In contrast to the initial proposal which all submitters opposed, several submitters supported the amended proposal. Many of the other submitters supported aspects of the proposal but raised specific concerns or suggested ways that it could be further improved. Where appropriate, the final proposal has been modified to address submitters’ concerns.

13. The broad issues raised by submitters are summarised below and addressed in detail in the analysis section of the report:

- the requirement to disclose information to Inland Revenue is too stringent;
- a trustee may hold insufficient information to maintain records;

- the worldwide income of a trust should not be taxed when a trustee fails to meet the information disclosure requirements; and
- membership of an acceptable professional body.

Analysis

Information to be disclosed to Inland Revenue

14. Most submitters support the proposed requirement for New Zealand resident trustees to provide certain information to Inland Revenue. However, some feel that this requirement is too stringent.

15. PricewaterhouseCoopers consider that a trustee should only be required to disclose information to Inland Revenue if a settlor of a foreign trust is resident in a country that has a DTA agreement with New Zealand.

16. We consider that limited information should be collected from all foreign trusts with a New Zealand resident trustee, irrespective of the country of residence of the settlor. As a New Zealand resident trustee may not know the country of residence of a settlor or a settlor may move between jurisdictions, it may be unclear, without analysis, where a settlor resides. Also, a beneficiary of a trust, rather than a settlor, may be of interest to a foreign tax authority. As New Zealand is currently working in partnership with Australia to negotiate Tax Information Exchange Agreements (TIEA) with non-OECD participating partners, it is also possible that valid requests for information on foreign trusts may be received from countries with which New Zealand has no DTA, but a TIEA.

17. The Society of Trusts and Estate Practitioners and the New Zealand Trustee Companies Association believe that the requirement to disclose information should only apply when a settlor of a foreign trust is resident in a country that is specified by law (only Australia on enactment of the current proposal).

18. We consider that this approach would not allow us to identify individuals or companies who provide trustee services in New Zealand. The creation of an Inland Revenue database of New Zealand resident trustees will assist Inland Revenue to target the appropriate trustee(s) when information is requested about a foreign trust.

Non-compliant foreign trusts subject to New Zealand tax on their worldwide income

19. In the amended proposal, failure by a New Zealand resident trustee to disclose certain information to Inland Revenue may result in the worldwide income of a foreign trust being treated as trustee income and taxed at 33%.

20. A number of submitters strongly opposed this tax treatment on the basis that the punishment is too harsh and inconsistent with the usual approach to taxation of non-residents who receive non-New Zealand sourced income. It is also seen as inappropriate to indirectly penalise foreign settlors and beneficiaries for failure by a New Zealand resident trustee to meet information disclosure requirements, particularly as trustees (such as co-trustees) may not personally hold the required information.

21. To deal with these concerns, we recommend that a New Zealand resident trustee who fails to disclose information only be subject to existing penalties under the Tax Administration Act.

22. We consider that it is appropriate to make a foreign trust liable to New Zealand tax on its worldwide income under certain circumstances, in particular, when a trustee fails to satisfy the acceptable professional body membership requirement. Membership of an acceptable professional body will provide some assurance to Inland Revenue that a New Zealand resident trustee will maintain financial records to the required standard and comply with the law. This is discussed in detail in paragraphs 27 and 28 of this report.

Record keeping requirements

23. Several submitters advised that some New Zealand resident trustees may not personally hold certain information relating to the offshore activities of foreign trusts they administer. Such trustees may be unable to satisfy the proposed requirement to keep and provide financial records and, therefore, may be penalised for non-compliance.

24. Under current tax law, taxpayers who are required to keep financial records may apply in writing to the Commissioner of Inland Revenue for permission to keep or retain records outside New Zealand. We consider that the Commissioner may, at his discretion, allow certain New Zealand resident trustees to hold records offshore. Trustees who maintain records outside New Zealand will be expected to provide records to Inland Revenue within a reasonable timeframe, if requested.

Membership of an acceptable professional body

25. A number of submitters broadly support the proposed requirement that a New Zealand resident trustee (or a New Zealand resident director of a trustee company) be a member of an acceptable professional body. However, some oppose this requirement on the grounds that Inland Revenue should not have the authority to determine who can, or cannot, provide trustee services in New Zealand.

26. We consider that there is a strong case for including this requirement. Under the initial proposal, a New Zealand resident trustee was required to provide detailed financial records to Inland Revenue on an annual basis. Under the final proposal, the onus is on the New Zealand resident trustee to maintain financial records and provide them to Inland Revenue if requested. The membership requirement is intended to provide some assurance to Inland

Revenue that a trustee has the necessary expertise to maintain records of the required standard and an incentive to comply with the law. Furthermore, if a trustee is convicted for failure to keep or provide records, this public information will be brought to the attention of their professional body. The professional body may take action against the trustee for failure to uphold its code of conduct.

27. We consider that continued failure by a New Zealand resident trustee to satisfy the requirement for membership of an acceptable professional body should (following notice by Inland Revenue that they will be prosecuted for non-compliance) result in a foreign trust being taxed in New Zealand on its worldwide income.

28. The possibility that this tax treatment will be imposed is likely to create a strong incentive for a New Zealand resident trustee to be a member of an acceptable professional body. If the worldwide income of a foreign trust becomes liable to New Zealand tax, the New Zealand resident trustee will be required to file an income tax return on that basis. The tax return will provide Inland Revenue with information that it can provide to New Zealand's DTA partners if requested. When a foreign trust becomes liable to New Zealand tax, the trustee will be required to keep financial records in New Zealand.

29. A number of submitters suggested professional bodies that they consider should be included as acceptable, despite the fact that these bodies do not satisfy all of the draft criteria. The Society of Trusts and Estate Practitioners, the New Zealand Trustees Association and Chartered Secretaries New Zealand were the most common suggestions.

30. We propose an amendment to the Tax Administration Act to provide the Commissioner of Inland Revenue with the discretion to include professional bodies that do not satisfy all of the criteria as acceptable. Such professional bodies will be invited to apply to the Commissioner of Inland Revenue for consideration. In practice, it is likely that professional bodies that have a code of conduct and entry criteria will be found acceptable.

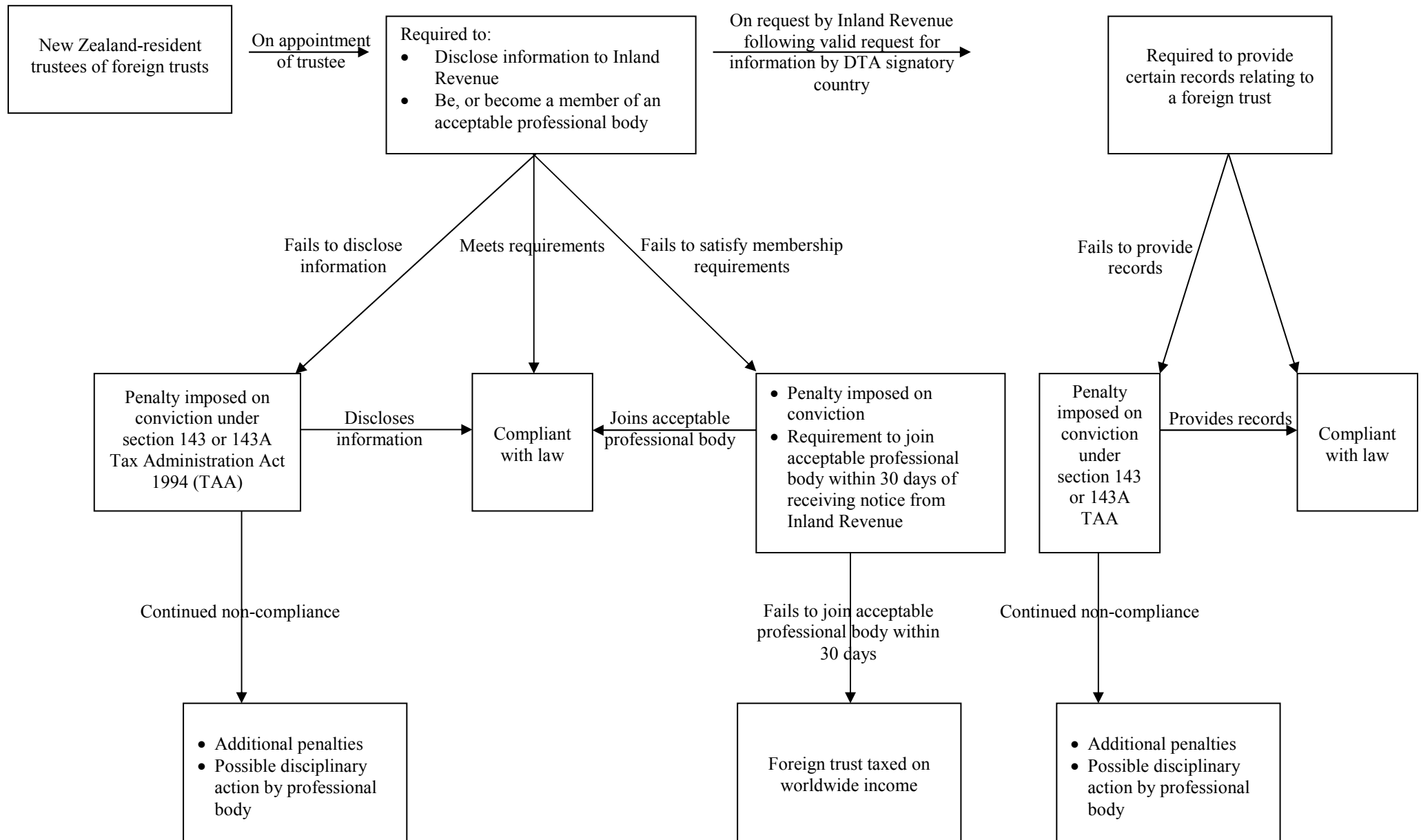
Final proposal for foreign trusts

31. We propose that tax legislation be amended to impose a statutory obligation on a New Zealand resident trustee of a foreign trust to:

- provide limited information to Inland Revenue;
- keep certain records relating to a foreign trust;
- provide these records to Inland Revenue if requested; and
- satisfy a requirement for membership of a professional body that is acceptable to Inland Revenue.

32. This proposal is illustrated in a diagram on the following page.

Foreign Trusts: proposed information and record-keeping requirements



Information to be disclosed to Inland Revenue

33. We propose that a New Zealand resident trustee be required to provide the following information to Inland Revenue upon appointment, or the enactment of the proposed amendments in relation to an existing appointment:

- the name of the trust or other identifiers such as the date of settlement or number of the trust;
- the name and contact details of the New Zealand resident trustee(s);
- the name of the acceptable professional body to which the trustee is a member; and
- the country of residence of the settlor(s) of the trust, if the country of residence is specified in law (Australia only to be specified on enactment of legislation).

34. Inland Revenue has agreed to provide automatically to the ATO information relating to foreign trusts that have a New Zealand resident trustee and an Australian resident settlor. To ensure that New Zealand is in a position to provide this information automatically, New Zealand resident trustees will be required to inform Inland Revenue if a trust has an Australian resident settlor at any time.

35. Australia is the only country to which New Zealand is currently proposing to provide information on a regular basis. Other countries may be added by legislation if Inland Revenue proposes to provide information automatically to a country.

36. Trustees will be required to take reasonable care to determine if a settlor is resident in Australia, based on the information that is available to them. If, for lack of information, a trustee fails to inform Inland Revenue that a settlor is resident in Australia, this will not result in the trustee being penalised for non-compliance.

37. From the application date of the proposed amendment, existing New Zealand resident trustees of foreign trusts will have 60 days to disclose the required information to Inland Revenue. Following this initial transition period, newly appointed trustees will have 30 days to meet their disclosure requirements. Trustees will be required to provide this information in respect of each trust that they act for.

Record keeping requirements

38. A New Zealand resident trustee will be required to keep certain financial records relating to a foreign trust in New Zealand for at least seven years after the end of the income year to which they relate. If a trust ceases to have a New Zealand resident trustee, the requirement to keep records for seven years will remain.

39. The records should enable a trust's financial position to be accurately determined at all times, include source documentation and provide details of settlements on the trust and

distributions to beneficiaries. For the purposes of this record keeping requirement, 'settlement' is defined in section OB 1 of the Income Tax Act 2004.

40. Under current tax law, taxpayers who are required to keep financial records may apply in writing to the Commissioner of Inland Revenue for permission to keep or retain records outside New Zealand or in a language other than English. If a New Zealand resident trustee does not personally hold certain information relating to a trust's offshore interests, the trustee may apply to the Commissioner to maintain records offshore and the Commissioner may exercise his discretion to allow this. A trustee would be expected to obtain and provide such records within a reasonable timeframe if requested.

The OECD's proposed minimum standards

41. The Organisation for Economic Co-operation and Development (OECD) established a Trust Technical Sub-group to consider, among other things, the maintenance of accounting records and the source documents that comprise accounting records by entities such as trusts.

42. The proposed record-keeping requirements for New Zealand resident trustees would meet the minimum standards outlined by the Sub-group in its discussion draft. If the Sub-group recommends more stringent reporting requirements, it may be necessary to amend any legislation introduced to ensure OECD standards are met.

Membership of an acceptable professional body

43. We propose that at least one New Zealand resident trustee of a foreign trust be required to be a member of a professional body that is acceptable to the Commissioner of Inland Revenue (such as an accounting or legal body). In the case of a trustee company, a New Zealand resident director of a trustee company would be required to be a member of such a professional body.

44. Several submitters suggested that where a trustee company has a New Zealand resident administrator (responsible for the day-to-day management of the company) but no New Zealand resident director, the administrator should be allowed to satisfy the membership requirement by being a member of an acceptable professional body. We agree with this approach.

45. New Zealand resident trustees will be required to disclose to Inland Revenue which acceptable professional body they (or the New Zealand resident director or administrator of their trustee company) are a member of, upon their appointment or the enactment of the proposed amendment in relation to existing appointments.

46. Unlike the initial proposal, where New Zealand resident trustees were to provide financial information to Inland Revenue on an annual basis, the final proposal places the onus on trustees to maintain the necessary records and provide them to Inland Revenue if requested. Representatives of the foreign trust industry particularly opposed the requirement

that detailed financial information be regularly provided to Inland Revenue on privacy grounds.

47. If at least one New Zealand resident trustee of a foreign trust is required to be a member of an acceptable professional body, this will provide assurance to Inland Revenue that a trustee has the necessary expertise and the incentive to maintain records of the required standard and will comply with the law.

48. To be acceptable, a professional body will be required to satisfy certain criteria specified in legislation. Acceptable professional bodies are likely to be those that require their members to comply with the following requirements as a condition of membership:

- adhere to a professional code of conduct and ethics;
- be subject to a disciplinary process that enforces compliance with the code of conduct and ethics; and
- follow certain ‘best practice’ guidelines.

49. In addition, members of acceptable professional bodies would provide, or could provide, trustee services as part of being a member of that professional body.

50. The legislation will also provide that the Commissioner may, at his discretion, deem other professional bodies that fail to satisfy all of the criteria to be acceptable. Once the legislation is enacted, Inland Revenue will issue administrative guidelines regarding the type of professional bodies that are likely to be found acceptable. In practice, such professional bodies are likely to have a code of conduct and entry criteria.

Requests for information about trusts from other countries

51. When information provided by a trustee indicates that a settlor of a trust is an Australian resident, Inland Revenue will request further information from the trustee on an annual basis (such as financial records, details relating to distributions to beneficiaries and the identity of the settlor). This information will be provided automatically to the ATO on an annual basis. ATO has indicated that the provision of this information by Inland Revenue will satisfy its requirements.

52. Information will be provided to other signatory countries to DTA agreements on a case-by-case request basis, when Inland Revenue has received a valid request for such information. In accordance with the OECD Model Treaty and Commentary on Article 26, Inland Revenue will not entertain general ‘fishing expeditions’ from DTA partners, for information on foreign trusts.

Ensuring compliance

53. If a New Zealand resident trustee fails to satisfy the requirement for membership of an acceptable professional body, they will be subject to a penalty for non-compliance. As part of the drafting process we will consider whether there needs to be a specific penalty for non-compliance with this requirement.

54. If a trustee fails to satisfy the membership requirement within 30 days of receiving a notice from Inland Revenue for non-compliance, the worldwide income of the trust will be treated as trustee income and taxed at 33%. If the trustee becomes a member of an acceptable professional body or a co-trustee is appointed that meets this requirement during this period, Inland Revenue may consider dropping the prosecution and will not tax the foreign trust on its worldwide income.

55. Our intention is not to tax foreign trusts on their worldwide income. This proposal is intended to ensure that New Zealand is in a position to meet its commitments under its DTAs, to co-operate with other tax jurisdictions. In practice, it is likely that most New Zealand resident trustees that do not satisfy the membership requirement will move offshore.

56. If a trustee fails to disclose information to Inland Revenue, or keep and provide records, that person may be subject to existing criminal penalties under the Tax Administration Act. Under this Act, a fine of up to \$50,000 (second offence) can be imposed for failure to knowingly provide information. The penalty for non-compliance is imposed upon conviction.

57. Furthermore, if a trustee is convicted for failure to keep or provide records, this public information will be brought to the attention of the trustee's professional body. The professional body may take action against the trustee for failure to uphold its code of conduct.

Exemption from requirements for trustees temporarily resident in New Zealand

58. We propose that a temporary exemption from the proposed information and record keeping requirements be allowed for New Zealand resident trustees who are new migrants and for those who have not been resident in New Zealand for a period of at least five years prior to their arrival. The exemption would apply for two years from the date that a trustee of a foreign trust becomes a New Zealand resident.

59. This exemption is intended to temporarily exclude from the proposed requirements, non-resident trustees who become New Zealand residents and expatriates who are appointed trustee of a foreign trust while in New Zealand, but return home after a temporary stay. These trustees will be allowed to remain outside the ambit of the proposal provided they move offshore within the two year period. If a trustee is still resident in New Zealand at the end of the two year period, the proposed requirements will apply.

Anti-money laundering and countering the financing of terrorism

60. The Ministry of Justice is in the process of developing a proposal for the creation of a supervisory framework intended to monitor compliance with anti-money laundering and countering the financing of terrorism obligations by financial institutions. Last time we reported to you we indicated that we would discuss with officials from the Ministry of Justice, the inter-relationship between their proposal and the foreign trusts proposal.

61. It may appear that the proposed requirements for a New Zealand-resident trustee of a foreign trust to provide limited information to Inland Revenue and keep financial records for New Zealand tax purposes will assist in the development of a supervisory framework for monitoring compliance with anti-money laundering and countering the financing of terrorism obligations by financial institutions. However, such assistance will be limited, as existing tax secrecy laws will prevent Inland Revenue from sharing information provided by foreign trusts with any domestic or foreign agencies, other than the tax authorities of countries that New Zealand has a DTA agreement with.

Bill of Rights and Privacy implications

62. During the first round of consultation, some submitters indicated that implementation of the initial proposal may give rise to issues of possible discrimination under the New Zealand Bill of Rights Act 1990 or be inconsistent with the Privacy Principles in the Privacy Act 1993.

63. We subsequently developed an amended proposal that we considered would address a number of these concerns.

64. We provided the Ministry of Justice and the Office of the Privacy Commissioner with a copy of the amended proposal for their consideration. Officials from the Ministry of Justice have provisionally advised that implementation of the amended proposal is unlikely to give rise to issues of discrimination under the New Zealand Bill of Rights Act.

65. The Privacy Commissioner's view is that the proposed requirements for New Zealand resident trustees to provide information to Inland Revenue may give rise to privacy concerns as information will be collected for the primary purpose of ensuring that Inland Revenue can satisfy valid requests for information from New Zealand's DTA partners.

66. Information Privacy Principle One in the Privacy Act states that personal information should not be collected by any agency unless the information is collected for a lawful purpose connected with a function or activity of the agency. The Privacy Commissioner considers that responding to requests for information from New Zealand's DTA partners is, arguably, not a function or activity of Inland Revenue.

67. We disagree with the Privacy Commissioner's interpretation of the law. The exchange of information provisions in New Zealand's DTAs state that signatory countries *shall* exchange such information as is necessary for carrying out the provisions in the Agreements.

As the exchange of information with New Zealand's DTA partners is non-discretionary, we consider that the collection and provision of such information is a lawful function or activity of Inland Revenue.

68. In the event that Information Privacy Principle One does apply we consider that there are valid grounds for introducing the proposed information and record keeping requirements and overriding this Principle. It is important that New Zealand continues to develop an on-going favourable relationship with Australia and meets its obligation to exchange information with its DTA partners. Also, draft guidelines produced by the OECD Trust Technical Sub-group state that every jurisdiction should have the power to get access to information from any person within their jurisdiction who has possession or control of information, in response to a specific request. The proposed requirements for New Zealand resident trustees of foreign trusts are in accordance with these guidelines.

Fiscal implications

69. This proposal is not expected to have any fiscal implications.

Administrative costs

70. There will be some administrative costs associated with the implementation of this proposal. As Inland Revenue currently collects no information from most foreign trusts, it has been difficult to estimate the number of New Zealand resident trustees that may provide information to Inland Revenue following the proposed changes.

71. Clarification on this point was sought as part of the consultative process. However, representatives of the New Zealand foreign trust industry were unable to estimate how many foreign trusts would likely be caught by the proposal.

72. Based on the limited information held by Inland Revenue we have estimated that 1000 New Zealand resident trustees will contact Inland Revenue during the income year commencing 1 April 2006 and 400 will make contact in each subsequent income year.

73. We estimate that implementation of the proposal will result in an operating cost of \$45,000 (GST inclusive) in the 2006-07 income year. The operating cost is estimated to be \$20,000 per annum (GST inclusive) in 2007-08 and subsequent income years.

74. Inland Revenue intends to meet these costs within existing baselines.

Compliance costs

75. All New Zealand resident trustees of foreign trusts will incur compliance costs under the final proposal.

76. These costs will be associated with the requirements to provide limited information to Inland Revenue upon appointment as a New Zealand resident trustee, maintain records relating to all financial activities undertaken by the trust and respond to any further requests for information by Inland Revenue.

77. We consider that the imposition of compliance costs can be justified as failure to collect and provide information pertaining to all foreign trusts that have a New Zealand resident trustee may damage New Zealand's relationships with its DTA partners, particularly Australia. Unless the proposal is implemented, New Zealand is also at risk of developing an international reputation for enabling harmful tax practices.

78. The final proposal has been developed with a view to minimising compliance costs incurred by New Zealand resident trustees. Most New Zealand resident trustees will only be required to provide limited information to Inland Revenue upon appointment as trustee, keep financial records and provide this information to Inland Revenue if requested.

79. A New Zealand resident trustee of a foreign trust that has an Australian resident settlor will incur additional compliance costs. These costs will be associated with responding to annual requests for detailed financial information from Inland Revenue.

Timing

80. We propose that any amendments apply from the income year commencing 1 April 2006.

Consultation

81. The Ministry of Foreign Affairs and Trade has been consulted in the preparation of this report and officials have indicated that they agree with the proposed recommendations.

82. The Ministry of Justice and the Office of the Privacy Commissioner have been consulted with respect to any issues potentially arising under the New Zealand Bill of Rights Act 1990 or the Privacy Act 1993, respectively. The Ministry of Justice was also consulted with respect to the inter-relationship between their proposal to create a supervisory framework intended to monitor compliance with anti-money laundering and countering the financing of terrorism obligations by financial obligations and the foreign trusts proposal.

83. The Ministry of Economic Development was provided with a copy of the draft report.

List of submitters

Joint submission from the Society of Trust and Estate Practitioners and the New Zealand Trustee Companies Association
New Zealand Trustees Association
Trustee Corporations Association of New Zealand
Institute of Chartered Accountants of New Zealand (ICANZ)
PricewaterhouseCoopers
R. U. Penning & Associates
Taylor Grant Tesiram
Patterson Hopkins
HSBC International Trustee (New Zealand) Limited
R&H Trust Company (New Zealand) Limited
Huddleston & Rosser Ltd
Withers LLP (London)
Kaitiaki Management Ltd
Ronald W. Angland & Son
Rawlinson & Hunter
William Cooney
Gordon Stewart
WKF Asset Management Limited
Reuben W. Tylor, Barrister
Dr Jorri Duursma

