

NEW ZEALAND

FOREIGN TRUSTS DISCLOSURE AND RECORD KEEPING RULES

The Taxation (Depreciation, Payment Dates Alignment, FBT and Miscellaneous Provisions) Act 2005 provides for amendments to sections of the Tax Administration Act 1994 and the Income Tax Act 2004 relating to the disclosure and record keeping rules for foreign trusts in New Zealand. Details of the rules have now been finalised by the Inland Revenue Department (IRD) and are outlined below:

Disclosure

From 1 October 2006 a qualifying resident trustee (i.e. a New Zealand resident trustee who is a member of an “approved organisation” e.g. a professional body such as the New Zealand Institute of Chartered Accountants or the New Zealand Law Society) of a foreign trust is required to complete and file a Foreign Trust Disclosure Form (IR 607) with the IRD within the following timeframes:

- For New Zealand resident trustees of foreign trusts appointed on or after 1 October 2006, within 30 days of the later of:
 - a) the date of the appointment of the trustee; or
 - b) the date of the trustee’s arrival in New Zealand;
- For New Zealand resident trustees of foreign trusts appointed before 1 October 2006, within 60 days of the later of:
 - a) 1 October 2006; or
 - b) the date of the trustee’s arrival in New Zealand.

The following information must be disclosed to the IRD on the Foreign Trust Disclosure Form (IR 607):

- 1) The full name of the foreign trust;
- 2) The full name and contact details of the New Zealand resident trustee of the foreign trust;
- 3) Whether there is an Australian resident settlor;
- 4) Whether the New Zealand trustee is a qualifying resident trustee of a foreign trust. If so, the name and contact details of the New Zealand resident person belonging to the approved organisation;
- 5) The number of New Zealand resident trustees of the foreign trust;
- 6) Whether a New Zealand resident trustee of the foreign trust has been appointed as an agent for disclosure and record keeping purposes.

Record Keeping Rules

New Zealand resident trustees are required to maintain the following records in New Zealand and provide them to the IRD for inspection upon request:

- 1) The Trust Deed;
- 2) A list of the assets and liabilities of the trust;
- 3) Details of any additions to or distributions out of the trust;
- 4) The name and address (if known) of the settlor of any additions;
- 5) The name and address (if known) of the recipient of any distributions;
- 6) Details of all trust income, including the amount, the original source and the date of receipt;
- 7) Details of all trust expenses, including the amount, the payee and the date of the payment.
- 8) If the trust carries on a business, the accounts and all supporting documentation for each New Zealand tax year.

Applications made to the IRD to keep trust records outside of New Zealand will be considered on a case-by-case basis. In order to apply to keep records offshore, the trustee must first provide the following information to the authorities:

- A brief outline of the activities of the foreign trust;
- Details of the precise proposed location of the foreign trust's records; and
- Confirmation that the foreign trust's records will be made available to the IRD within one month of a request for them being made (and at no cost to the IRD)

All records and financial statements relating to the foreign trust must be kept in English, unless otherwise agreed with the IRD.

Failure to comply with these requirements may result in the prosecution of the New Zealand resident trustee of the foreign trust, and in certain circumstances, this trustee may be taxed in New Zealand on the foreign trust's worldwide income.

For background information on these rules please refer to the article entitled "New Zealand – Consultation on Proposed Foreign Trust Policy – December 2004" in the archive section of the Rawlinson & Hunter website.

If you are a client of Rawlinson & Hunter and you wish to discuss any of the matters raised in this edition of Briefing, please call the partner who normally deals with your tax affairs. If you are not an existing client but would like to know more about these issues, please call any of the partners listed.

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