

## TRUSTS/TAX

# Govt ups the ante against trustees and beneficiaries

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## Anthony Grant

Last December, the government enacted powers giving the IRD the right to acquire a huge amount of information about trusts.

In response, the IRD published an Official Information Issues Paper a few days ago. The public has been invited to make submissions on it by 15 November 2021 – a deadline so tight it suggests the IRD doesn't want many submissions.

The IRD has also issued a 46-page 'operational statement' entitled *Reporting requirements for domestic trusts* and the deadline for comment on this paper is 30 November 2021.

The explanations the IRD has given for wanting huge amounts of information about trusts that are recorded in these reports is:

- to gain insight as to whether the top personal tax rate of 39% is working effectively; and
- to provide better information to understand and monitor the use of structures and entities by trustees.

The real reason for wanting to get so much information about trusts appears to be a wish on behalf of the present government to tax people associated with trusts in ways they have never been taxed before.

The IRD says its records indicate that about 180,000 domestic trusts report assessable income each year. Many of the people associated with these 180,000 trusts will be affected by the proposed disclosure requirements.

These are some of the changes the IRD wants to implement:

- It wants trustees to prepare annual profit and loss statements and statements of financial position.
- It wants to know who has settled assets on trusts.
- It wants to know who has received benefits from trusts.
- It wants 'financial information relating to non-business activity' of trusts.



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- It wants to know the amount and nature of each settlement that is made on a trust 'at less than market value'.
- It wants details of 'minor services that are incidental to the activities of the trust' which the trust hasn't paid for.
- It wants 'the name, date of birth, tax residence, tax file number, taxpayer identification number of each settlor who makes a settlement on the trust' (you will see in a moment that the term 'settlor' is given a much wider meaning than is used for that term in the Trusts Act 2019).
- It wants the same details 'of each person having a power under the Trust to appoint or dismiss a trustee, to add or remove a beneficiary, or to amend the trust deed'.
- It wants a trust's accounts to record 'all (interest and non-interest bearing) loans to persons associated with the trust...'
- It wants the value of real estate assets to be given in a trust's annual financial statements.
- It wants the market value of buildings owned by a trust to be recorded in a trust's annual financial statements.
- It wants the list of a trust's liabilities to include 'all (interest and non-interest bearing) loans from persons associated with the trust...'
- The annual statement of financial position is to record the trust's equity in three components – the owners' equity, drawings and current account year-end balances.
- If services are provided to a trust at less than market value, the difference is to be deemed as interest on a beneficiary's current account.
- If trust property (eg, a house) is 'enjoyed by the beneficiary... for less than market value', the sum is to be recorded as a drawing in favour of the beneficiary.
- If services are provided to the trust at less than market value, the value of the services is to be recorded as a settlement on the trust.
- A 'settlor' of a trust is to be deemed to include 'a person who at any time provides, for less than market value, services to the trust for the benefit of the trust that are more than incidental to the operation of the trust'.
- 'Any beneficiary who is owed an amount by the trust that exceeds \$25,000 at the end of the income year and is not

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paid interest at the prescribed or market rate' is deemed to be a settlor.

- A distribution from a trust will be deemed to have been made 'in relation to non-cash distributions such as the provision of services, interest-free loans, or the use of assets by the beneficiaries at no cost'.
- If a trust-owned rental property is made available to a beneficiary, the trustees must record as a beneficiary distribution at the market rent of the property or the distribution at cost.
- When a debt is forgiven due to natural love and affection, the sum involved is to 'constitute a distribution to the beneficiary'.

The notion that all this information is required to 'gain insight into whether the top personal tax rate of 39% is working effectively' is absurd.

The information can be wanted only because the IRD and the present government want to tax people who lend money to trusts at less than market rates, people who get benefits from trusts, people who provide services to trust assets and people who have powers in relation to trusts, as they have never been taxed before.

Readers are encouraged to obtain the IRD's operational statement (quote reference EDO235) and send feedback to [public.consultation@ird.govt.nz](mailto:public.consultation@ird.govt.nz) before 15 November 2021. ■

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