



**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

Deadline for comment | Aukatinga mō te tākupu: **19/June/2025**

Please quote reference | Whakahuatia te tohutoro: **PUB00494**

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
public.consultation@ird.govt.nz

FACT SHEET | PUKA MEKA

Income tax – Whether money or property received by New Zealand tax residents from overseas is income from a foreign trust

Issued | Tukuna: 15 March 2025

FS #

This fact sheet accompanies **IS xx/xx: Income tax – Whether money or property received by New Zealand tax residents from overseas is income from a foreign trust**. The interpretation statement considers the income tax treatment of amounts of money or property New Zealand resident taxpayers receive from a person overseas, including through inheritance. It addresses how to determine whether the person who transfers the money or property is a trustee of a trust and when the resident taxpayer will have derived beneficiary income or a taxable distribution from a foreign trust.

The statement also explains that a New Zealand tax resident may have tax obligations for amounts of money or property they receive from overseas even if it is not a distribution from a foreign trust.

This fact sheet summarises the statement. It will be of interest to New Zealand tax residents who receive money or property overseas that may possibly be taxable in New Zealand and to their tax advisors.

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

RELATED DOCUMENTS | TUHINGA WHAI PĀNGA

The following statements and guides may provide further assistance with the issues covered in this fact sheet and the interpretation statement:

IS 24/01: Taxation of trusts	This statement explains how income trustees derive is taxed and what compliance obligations apply to settlors, trustees and beneficiaries of a trust.
IS 21/09: Income tax – foreign tax credits – How to calculate a foreign tax credit	This statement explains how to calculate a foreign tax credit under subpart LJ.
IS 20/06: Income tax – Tax issues arising from owning foreign residential rental property	This statement explains how to calculate income from residential rental property located overseas.
IS 16/03: Tax residence¹	This statement explains the residence rules for individuals, companies and trusts. A New Zealand tax resident is generally liable for tax on their worldwide income.
Foreign income guide – IR1247	This guide explains different types of income a New Zealand tax resident can earn overseas and how it is taxed.
Guide to foreign investment funds – IR461	This guide explains the tax rules for foreign investment funds.

¹ This statement is currently being updated.

Key provisions | Whakaratonga tāpua

Section CV 13 includes beneficiary income and taxable distributions from a foreign trust in income.

Subpart HC contains most of the rules relating to the taxation of trusts.

Key terms | Kīanga tau tāpua

Trust	An arrangement in which a person ("settlor") transfers property to another ("trustee") who has an obligation to hold that property for beneficiaries or a charitable purpose ("beneficiaries").
Foreign trust	A trust that has had no New Zealand tax resident settlor.
Beneficiary income	Income a trustee derives but is vested in or paid to a beneficiary within prescribed timeframes.
Taxable distribution from a foreign trust	A transfer of value to a beneficiary from the trustee of a foreign trust, unless it is a transfer of beneficiary income, certain capital gains and corpus.

Introduction | Whakataki

1. In general, New Zealand tax residents who are not transitional residents are taxable on their worldwide income. This income includes beneficiary income and taxable distributions from foreign trusts.
2. When a resident taxpayer receives or is entitled to an amount of money or property from someone overseas, they should consider whether it is taxable. It potentially is taxable even if the money or property is not repatriated to New Zealand, the property is in New Zealand or a foreign jurisdiction has already deducted tax.
3. This fact sheet summarises whether an amount of money or property a taxpayer receives from overseas is beneficiary income or a taxable distribution from a foreign trust. It also summarises other types of income that could arise from property held overseas when a foreign trust does not arise. It does not cover the situation where a

foreign trust has a New Zealand resident trustee as distributions to New Zealand tax residents are less common from such trusts.

Beneficiary income and taxable distributions from a foreign trust with a non-resident trustee

4. In considering the income tax treatment of an amount of money or property a New Zealand resident taxpayer receives from overseas, the first step is to determine whether the amount has come from a trust that is a foreign trust. If it is a foreign trust, it is necessary to apply the trust rules and consider whether the amount is beneficiary income or a taxable distribution.

What is a trust?

5. For New Zealand tax purposes, a trust is an arrangement in which a settlor transfers property to a trustee. The trustee must hold the property for the benefit of beneficiaries or a charitable purpose. If such an arrangement exists for money or property anywhere in the world, a New Zealand tax resident may be liable to pay tax if they receive a transfer of value, such as a distribution of money or property, no matter what term is used for the arrangement in the foreign jurisdiction. In this situation, a trust deed usually exists but this is not always the case.
6. The key consideration is whether the arrangement under New Zealand law has the features of a trust.² If a person that is overseas gives a New Zealand tax resident their money or property, that is a gift at face value and not taxable. However, if they transfer the money or property to someone who has an obligation to hold it for the resident's benefit, that is likely to result in a trust. When the trustee of a foreign trust transfers value to a New Zealand tax resident, it may be beneficiary income or a taxable distribution.
7. An estate is not a trust but a trust can arise from a will. As a general rule, in common law countries such as Australia, Canada, New Zealand and the United Kingdom, the executor or administrator has the legal and beneficial interest in the estate's property until assent and a trust does not arise. Assent is the time at which the administration of the estate is complete. A distribution at the point of assent is likely to be an inheritance in the hands of a New Zealand resident taxpayer and not taxable. However, a foreign trust might be settled after assent in keeping with the terms of the

² See Example | Taura 1 in IS xx/xx for an example of an arrangement where the features of a trust are not present.

will³ or may arise due to the circumstances. Distributions from a foreign trust may result in beneficiary income and taxable distributions.

8. In civil law countries, such as France, Germany and Switzerland, the general position is that heirs inherit property directly on death and, from a New Zealand point of view, it is likely to be held on a bare trust for the beneficiary until distribution. For a New Zealand tax resident, income, such as interest, dividends and rental income, arising from bare trusts is treated as belonging to them and must be returned here. However, a trust might arise from the actions of the parties involved in the estate, which could result in beneficiary income and taxable distributions.⁴

What is a foreign trust?

9. In general, a trust is a foreign trust at a point in time if it has never had a settlor who was tax resident in New Zealand when any settlement was made. However, this fact sheet is not directed at foreign exemption trusts with a New Zealand tax resident trustee, but rather foreign trusts with non-resident trustees and a New Zealand tax resident beneficiary.

How is income from a foreign trust taxed?

10. In general, income that a trustee of a foreign trust derives in an income year is taxed as either beneficiary income or trustee income.
11. Beneficiary income is current-year income that vests in a beneficiary during the income year or that the trustee pays to the beneficiary within prescribed timeframes. Beneficiary income that a New Zealand resident derives from a foreign trust is taxable.
12. Trustee income is income a trustee derives that is not allocated as beneficiary income. It is often referred to as "accumulated" or "retained trustee" income. Where a non-resident trustee of a foreign trust derives the income and that income does not have a source in New Zealand, the trustee is not liable to pay tax here.
13. Taxable distributions from a foreign trust are transfers of value from a trustee of a foreign trust to a beneficiary, except for transfers involving beneficiary income, certain capital gains and corpus. Taxable distributions from foreign trusts are taxable to New Zealand resident beneficiaries. Ordering rules determine the elements of a distribution. These rules prescribe that a distribution consists of taxable amounts

³ See Example | Taura 4 in IS xx/xx.

⁴ See Example | Taura 2 and Example | Taura 5 in IS xx/xx.

before amounts that are not taxable.⁵ They override the trust deed and the discretion of a trustee but do not apply to a non-discretionary trust created by a will.⁶

14. Under the ordering rules, income that a trustee derives is calculated according to New Zealand's tax laws rather than the jurisdiction from which the trustee derives it. This means financial statements prepared overseas may need to be modified to show current-year income, accumulated income, capital gains and corpus according to New Zealand income tax law.
15. If it is not possible to determine the elements of a distribution accurately from the records of a foreign trust, the distribution is a taxable distribution. The onus is on the beneficiary to establish the elements of a distribution.⁷
16. Beneficiary income and taxable distributions from a foreign trust that a New Zealand tax resident receives are taxed at marginal tax rates. Generally, a taxpayer needs to report the amounts in an IR3 tax return.

If no trust or foreign trust arises

17. If the arrangement is not a trust or a foreign trust,⁸ income could still arise for a New Zealand tax resident. This part considers some ways in which this may occur.

The arrangement is a company rather than a trust

18. If an arrangement does not have the features of a trust from the point of view of New Zealand law, it may instead have the features of a company. For example, a foundation in a civil law country (which might equate to a purpose trust in a common law country) would be treated as a company under New Zealand law. Amounts that a taxpayer receives from such an arrangement may be dividends. It may also be necessary to consider whether the beneficiary has to apply foreign investment fund or controlled foreign company rules.

⁵ See Example | Taura 3 in IS xx/xx.

⁶ See Example | Taura 6 in IS xx/xx.

⁷ See Example | Taura 7 in IS xx/xx.

⁸ IS xx/xx concerns foreign trusts with non-resident trustees. A foreign trust may have a resident trustee. These trusts, which are known as foreign exemption trusts and have registration obligations, are less likely to make distributions of foreign income to New Zealand tax residents. For a brief discussion, see IS 24/01 at [13.7].

The trust is a non-complying trust

19. The arrangement may be a trust that is a non-complying trust. This could occur, for example, where the settlor becomes resident in New Zealand and no election is made to treat the trust as a complying trust. Beneficiary income derived from a non-complying trust is taxed at a New Zealand tax resident's marginal tax rate. Taxable distributions are amounts other than beneficiary income and corpus. They are taxed at 45% to a New Zealand tax resident.⁹

The trust is a bare trust

20. The arrangement may be a bare trust. This arises where a person holds property for another person but they have no duties other than to guard the property and pass it on. In such cases, the beneficiary is taxed on all income that the property generates. Where that property is overseas, a New Zealand tax resident will need to consider whether the property has generated, for example:
- interest income;
 - financial arrangement income;
 - dividends;
 - foreign investment income;
 - controlled foreign company income;
 - rental income; and/or
 - gains on the disposal of property.
21. If the taxpayer has paid tax on income overseas, foreign tax credits may be available. It may be necessary to consider any double tax agreement between New Zealand and the other country. In general, for a credit to be available, the tax paid overseas must be of the same nature as that payable in New Zealand. This means inheritance tax, for example, would not be eligible for a tax credit as it is not of a similar nature to income tax in New Zealand.
22. It is beyond the scope of this fact sheet and IS xx/xx to consider the different types of income that might arise and whether tax credits are available. We recommend reviewing the publications listed at the start of this fact sheet or speaking to a tax advisor if your circumstances suggest you may have an obligation.

⁹ See Example | Taura 5 in IS xx/xx.

Draft items produced by the Tax Counsel Office represent the preliminary, though considered, views of the Commissioner of Inland Revenue.

In draft form these items may not be relied on by taxation officers, taxpayers, or practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
public.consultation@ird.govt.nz

About this document | Mō tēnei tuhinga

Some of the Tax Counsel Office's longer or more complex items are accompanied by a fact sheet that summarises and explains an item's main points. While it summarises the Commissioner's considered views, a fact sheet should be read alongside the full item to completely understand the guidance. Fact sheets are not binding on the Commissioner. See further [Status of Commissioner's advice](#) (Commissioner's statement, Inland Revenue, December 2012).