



Inland Revenue
Te Tari Taake

OPERATIONAL STATEMENT

Reporting requirements for domestic trusts

Issued: 6 April 2022

OS 22/02

Operational Statements set out the Commissioner of Inland Revenue's (the Commissioner) view of the law in respect of the matter discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

This Statement sets out the Commissioner's approach to applying the trust information gathering powers contained in section 59BA and section 59BAB of the Tax Administration Act 1994.

All legislative references are to the Tax Administration Act 1994 (the TAA) unless otherwise stated.

The Income Tax Act 2007 is abbreviated to ITA.

The Tax Administration (Financial Statements – Domestic Trusts) Order 2022 is abbreviated to OIC.

This Statement applies from the date of issue.

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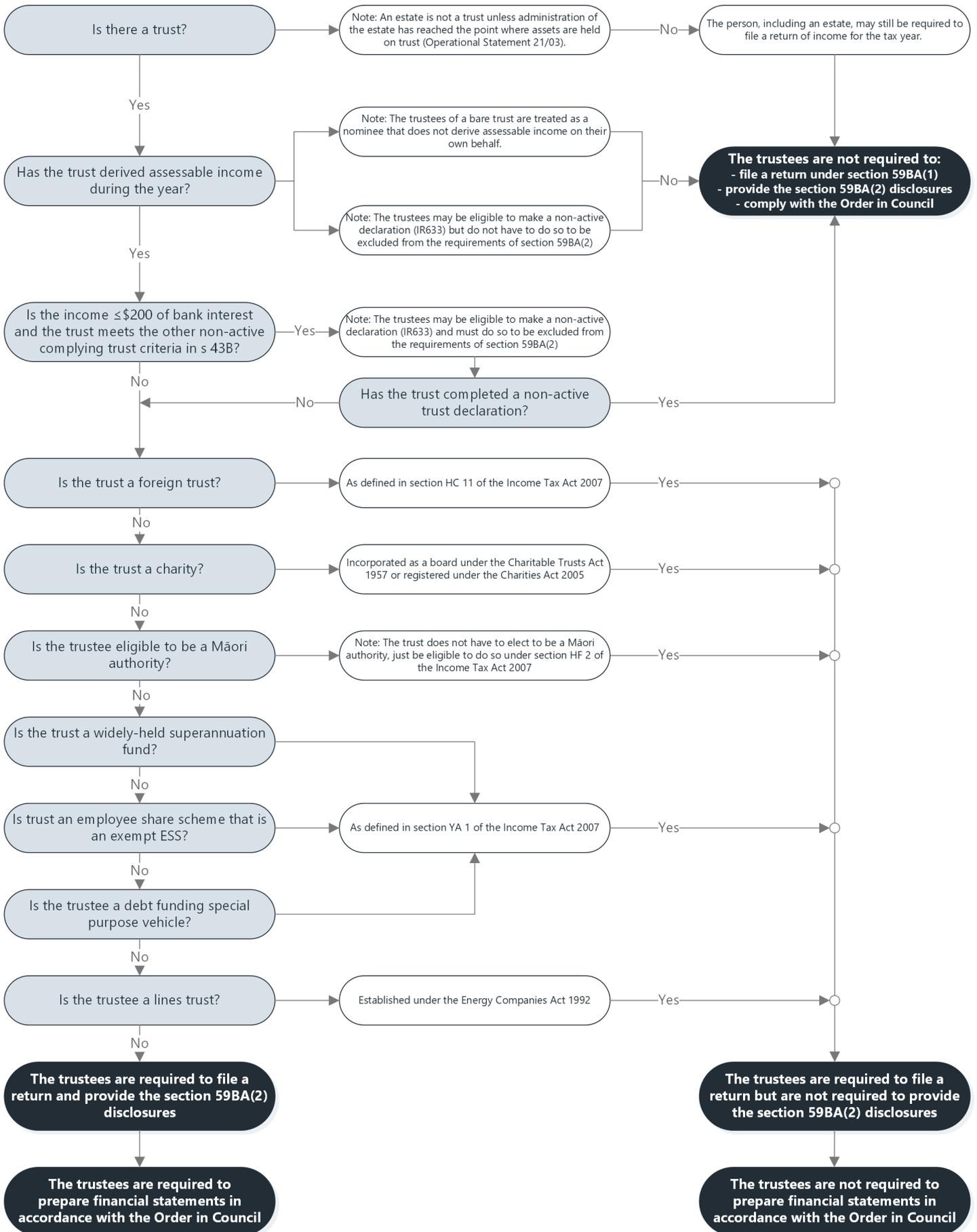
Introduction

1. The trust information gathering powers in s 59BA apply for the 2021-22 and later income years. The retrospective trust information gathering powers in s 59BAB were introduced for periods beginning after the end of the 2013-14 income year.
2. The Taxation (Annual Rates for 2021-22, GST, and Remedial Matters) Act 2022 amended s 59BA to exclude minor and incidental non-cash distributions from the information required to be included with any return and to also exclude foreign trusts required to file a return from having to provide the further information required by s 59BA(2).
3. As outlined in Tax Information Bulletin Volume 33 Number 3 (April 2021) (at pp 5-8) the purpose of trust information gathering powers is to collect further information from trustees to:
 - 3.1. gain insight into whether the top personal tax rate of 39% is working effectively; and
 - 3.2. to provide better information to understand and monitor the use of structures and entities by trustees.
4. The Commissioner may use the information collected for compliance and audit purposes.

Summary

5. The key points discussed in this Statement are summarised as follows:
 - 5.1. Obligation to file returns
 - 5.2. Order in Council (OIC)
 - 5.3. Information required
 - 5.3.1. A statement of profit or loss and a statement of financial position
 - 5.3.2. Settlor & settlement details
 - 5.3.3. Beneficiary & distribution details
 - 5.3.4. Persons with powers of appointment

- 5.4. Excluded trusts
 - 5.5. Persons responsible for performance
 - 5.6. Variation to the requirements
 - 5.7. Retrospective collection
6. Trustees who derive assessable income must file a return under s 59BA(1) for the tax year of all income derived in the corresponding income year in the form prescribed by the Commissioner. Unless the trust is an excluded trust under s 59BA(3), the trustees are also required to include the information set out in s 59BA(2)(a) to (f).
 7. The obligation to provide further information with the return is different from the obligation to maintain the financial statements required by the Tax Administration (Financial Statements – Domestic Trusts) Order 2022 (the OIC). Trustees who derive assessable income are obliged to prepare the financial statements required by the OIC (see 25 for more information) but these financial statements are not required to be provided to the Commissioner (unless the Commissioner requests them).
 8. Certain information will need to be copied from the financial statements and included in the tax return filed with the Commissioner. This Operational Statement sets out what information the Commissioner requires to be provided with the tax return in order to comply with s 59BA.
 9. The following flowchart summarises who is, and who is not, required to comply with s 59BA:



Obligation to file returns

10. Section 59BA(1) sets out the requirement for a trustee of a trust that derives assessable income to file a return.

59BA Annual return for trusts

- (1) A trustee of a trust who derives assessable income for a tax year must file a return for the tax year of all income derived in the corresponding income year by the trustee as trustee of the trust.

11. All trustees of a trust, except a non-active complying trust, who derive assessable income for a tax year must file a return for all income derived in the corresponding income year.
12. Assessable income is defined in sections YA 1 and BD 1(5) of the ITA. Assessable income does not include exempt, excluded or non-residents' foreign sourced income.
13. Section 59BA(3) excludes certain trustees from the requirement under s 59BA(2) to include further information in the return. Even if not required to include the further information, if a trustee derives assessable income, they must still file a return of that income.

Non-Active Complying Trusts

14. Section 43B allows trustees of a non-active complying trust to be excused from the obligation to furnish a return of income if the trust meets certain requirements.

43B Trustees of non-active trusts and administrators or executors of non-active estates may be excused from filing returns

- (1) A person who is a trustee of a trust or an administrator or executor of an estate is not required to make a return of income for a tax year for the trust or estate if—
- (a) the trust or estate is non-active throughout the income year corresponding to the tax year; and
 - (b) for a person who is a trustee, the trust is a complying trust under

- section HC 10 of the Income Tax Act 2007; and
- (c) the person has provided to the Commissioner, in a form approved by the Commissioner,—
 - (i) a declaration that the trust or estate is non-active and that the person will notify the Commissioner if the trust or estate ceases to be non-active; and
 - (ii) a statement of the matters required by the Commissioner.
 - (2) For the purposes of this section, a trust or estate is non-active for a tax year if, throughout the income year corresponding to the tax year, the trustee of the trust or the administrator or executor of the estate—
 - (a) has not derived any income; and
 - (b) has no deductions; and
 - (c) has not been a party to, or perpetuated, or continued with, transactions with assets of the trust or estate which, during the corresponding income year,—
 - (i) give rise to income in any person's hands; or
 - (ii) give rise to fringe benefits to an employee or to a former employee.
 - (3) In determining whether a trust or estate complies with the requirements of subsection (2), no account shall be taken of any—
 - (a) reasonable fees paid to professional persons to administer the trust or estate; or
 - (b) bank charges or other minimal administration costs totalling not more than \$200 in the tax year; or
 - (c) interest earned on trust or estate assets in any bank account during the tax year, to the extent to which the total interest does not exceed \$200; or
 - (d) insurance, rates, and other expenditure incidental to the occupation of a dwelling owned by the trust or estate and incurred by the beneficiaries of the trust or estate.
 - (4) Where at any time any paragraph of subsection (2) ceases to apply to a trust or estate for which a declaration under this section has been made, a trustee of the trust or administrator or executor of the estate must notify the Commissioner that the trust or estate has ceased to be a non-active.
 - (5) Despite subsection (1), a person who is a trustee of a non-active trust or an executor or administrator of a non-active estate must furnish a return of income if required by the Commissioner to do so.

15. A trustee of a trust who wishes to be excused, under s 43B, from the requirement to

furnish a return of income must make a declaration that it is a non-active complying trust (currently the IR633).

16. If at any time the trust no longer meets the requirements to be eligible for non-active status it must notify Inland Revenue and furnish a return of income for the relevant year.

Example 1 – non-active status

The Jane Smith Trust owns a residential property that is occupied by Jane Smith (a beneficiary of the trust). The holding costs of the property (rates & insurance) are paid by Jane, and she does not pay rent to the trust.

The trust also has an interest-bearing bank account and has advised their bank to deduct withholding tax from interest earned at 33%. The total interest earned by the Trust is less than \$200 per year.

The Trust has an IRD number and has historically included only the interest income in its income tax return. The trust meets the criteria for non-active status so completes an IR633 and provides it to Inland Revenue.

Whilst it continues to meet the relevant criteria the trustees no longer have any obligation to file returns and therefore do not have to comply with the additional information disclosures required by s 59BA(2).

If, at any stage, the trust no longer meets the relevant criteria for non-active status the trustees need to let Inland Revenue know and start filing annual income tax returns.

17. If a trustee of a trust does not make the declaration as required by s 43B(1)(c) but is otherwise eligible to be excused from filing a return as a non-active complying trust, the trustee will still be required to comply with the requirements of s 59BA if they derive assessable income.

Example 2 – eligible for non-active status but no declaration made

The Bill Burns Trust owns a residential property that is occupied by Bill Burns (a beneficiary of the trust). The holding costs of the property (rates & insurance) are paid by Bill, and he does not pay rent to the trust.

The trust also has an interest-bearing bank account and has advised their bank to deduct withholding tax from interest earned at 33%. The total interest earned by the Trust is less than \$200 per year.

Although the trust meets the criteria for non-active status, the trustees have not completed a non-active declaration and the trust is required to file income tax returns as it is not excused from doing so under s 43B.

As the trust has derived assessable income and is required to file an income tax return, the trustees will be required to comply with the full s 59BA(2) disclosure requirements.

Bare Trusts

18. A bare trust is a type of trust under which the trustee holds property on trust without any duties to perform other than to convey the trust property to the beneficiary or as the beneficiary directs. See Question We've Been Asked 16/03 *Goods and services tax – GST treatment of bare trusts*.

19. A bare trustee has been described as:

... a person who holds property in trust for the absolute benefit and at the absolute disposal of other persons who are of full age and mental capacity in respect of it, and who has himself no present beneficial interest in it and no duties to perform in respect of it except to convey or transfer it to persons entitled to hold it, and he is bound to convey or transfer the property accordingly when required to do so.

Disputant Q v Commissioner of Inland Revenue [2015] NZTRA 22

20. Section YB 21 of the ITA clarifies that a trustee of a bare trust is a nominee, and that if a person holds something or does something as a nominee for another person, the other person holds or does that thing and the nominee is ignored.

YB 21 Transparency of nominees

Treatment of nominee

- (1) In this Act, unless the context otherwise requires, if a person holds something or does something as a nominee for another person, the other person holds or does that thing and the nominee is ignored.

Who is a nominee?

- (2) A person holds or does something as a nominee for another person if the person acts on the other person's behalf. However, a trustee is a nominee only if the trustee is a bare trustee.

Nominal settlements

- (3) A person making a nominal settlement at the request of another person is treated for the purposes of this Act as a nominee in relation to the settlement....
21. Funds held in a trust account which are held on bare trust, such as money received by a practitioner under s 110 of the Lawyers and Conveyancers Act 2006, are held by the person as a nominee for another person and the nominee is ignored.
22. The trustee of a bare trust is treated as not deriving any assessable income on their own behalf, as the trustee in that instance is a nominee and is therefore ignored.
23. As the trustee of a bare trust is treated as not deriving any assessable income, there is no obligation for the trustee to file an income tax return under s 59BA(1), or to comply with the additional disclosure requirements of s 59BA(2).
24. A trustee who holds funds in a trust account, on bare trust, such as a solicitor's trust account, is not required to file a return under s 59BA(1). It is not intended to list all the trust accounts that are considered by the Commissioner as bare trusts and not all trust accounts will be bare trusts; it will depend on the nature of the trust upon which the funds are held.

Tax Administration (Financial Statements — Domestic Trusts) Order 2022 – the OIC.

25. A trustee who is required to file a return that complies with s 59BA(2) must prepare financial statements in accordance with the applicable minimum requirements prescribed in the OIC; see s 21B(2) and clause 4 of the OIC.
26. For trust disclosure purposes, "financial statements" are the financial statements required to be prepared in accordance with the OIC and the "statement of profit and loss and statement of financial position" are the statement of profit and loss and statement of financial position required by s 59BA(2) to be included with the return.
27. If a trustee is not required to file a return that complies with s 59BA(2), then they are not required to prepare the financial statements required by the OIC.
28. While the financial statements are not required to be provided to the Commissioner with the return, they must be available if the Commissioner later requests them. The

information required to be provided with the return (the statement of profit and loss and statement of financial position) should be copied from the OIC financial statements.

Minimum requirement for preparing financial statements

29. The minimum requirements for preparing the financial statements and the matters that the financial statements must show are set out in clause 5 and the Schedule of the OIC.

Simplified Reporting Trust

30. Not all of the minimum requirements in clause 5 and the Schedule of the OIC apply to a simplified reporting trust.
31. A trust is a simplified reporting trust in relation to an income year if:
- 31.1. the trustee of the trust derives assessable income of less than \$100,000; and
 - 31.2. the deductible expenditure or loss incurred during the income year by the trustee of the trust is less than \$100,000; and
 - 31.3. the amount of total assets of the trust as at the end of the income year (or an accounting period if permitted) is less than \$5 million.
32. For the purposes of determining if a trust is a simplified reporting trust:
- 32.1. Assessable income has the same meaning as in s BD 1 of the ITA (and includes both beneficiary and trustee income referred to in s HC 5 of that Act) but does not include an amount of income derived under s CB 6A of the ITA (bright-line test for residential land income).
 - 32.2. Deductible expenditure or loss means a deduction for an amount of expenditure or loss that is allowed under Part D of the ITA but does not include a deduction allowed under s DB 23 of the ITA (revenue account property deduction).
 - 32.3. The amount of the total assets must:
 - 32.3.1. include all assets whether or not they are revenue account property as defined in s YA 1 of the ITA; and

- 32.3.2. in relation to each asset that are shares or ownership interests, land or buildings, be calculated using the same valuation principle that is disclosed for the asset in the financial statements; and
 - 32.3.3. be consistent with the amounts disclosed in the financial statements.
- 33. Simplified reporting trusts do not have to:
 - 33.1. apply the principles of accrual accounting. They can use cash-basis accounting in the preparation of their financial statements;
 - 33.2. include a statement of accounting policies;
 - 33.3. disclose comparable figures for the previous income year (or accounting period if permitted);
 - 33.4. include a reconciliation of the profit and loss in the statement of profit and loss with the trustee's taxable income for the income year;
 - 33.5. include a schedule of the trust's fixed assets and depreciable property;
 - 33.6. include, if the trustee derives income from forestry, information about the cost of timber as at the end of the income year (or accounting period if permitted) or a reconciliation of movements in the cost of timber during the year;
 - 33.7. include, if the trust includes specified livestock, details of livestock valuation methods, valuations and calculations for tax purposes;
 - 33.8. include, for each transaction in connection with the trust that is entered into between the trustee and any associated person, the name of the associated person, the nature of the association or the nature of the transaction including the amounts involved.
- 34. Being a simplified reporting trust does not exempt the trustees from preparing financial statements nor from their obligation to file a return and include the information required by s 59BA(2). It only modifies the way in which financial statements are compiled in order to meet minimum standards required the OIC.
- 35. A simplified reporting trust will still need to file a return and provide the information required by s 59BA(2). The trustee will be able to use the information in the simplified reporting trust financial statements in their s 59BA return.

Prior year comparable figures

36. A trustee is only required to prepare financial statements in years that the trustee derives assessable income and is also required to provide the information required by s 59BA(2).
37. The minimum standards for financial statements include, for trusts that are not simplified reporting trusts, a requirement to disclose comparable figures for the previous income year (or accounting period if permitted).
38. In a year that a trustee is required to prepare financial statements and where that year follows a year that the trustee is not required to prepare financial statements, the financial statements will be required to disclose comparable figures only to the extent that the trustee has that information. Thus, if that information has not been prepared and/or is not held by the trustees for the prior year, the comparable figures will not be required to be disclosed, although it is likely that some information will be prepared or held due to the requirements of the Trusts Act 2019 to keep financial records.
39. Section 45 of the Trusts Act 2019 requires that trustees must keep "*records of the trust property that identify the assets, liabilities, income, and expenses of the trust*", so it is expected that trustees will maintain sufficient records to calculate the opening balances of assets, liabilities, and equity (discussed further at [52] to [58]) for any year that they are required to prepare financial statements.
40. The first year for which the financial statements are required to be prepared to the minimum standards is the 2021-22 income year. As trustees may not have previously prepared financial statements, or have prepared statements to a lower standard, the requirement to disclose comparable figures is only required to the extent that the trustee has that information.

Associated persons transactions

41. The minimum standards for financial statements include, for trusts that are not simplified reporting trusts, a requirement to disclose information about transactions with associated persons:
 - 41.1. the name of the associated person; and
 - 41.2. the nature of the association with the associated person; and
 - 41.3. the nature of the transaction, including the amounts involved.

42. Certain transactions are not required to be disclosed in the financial statements if:
- 42.1. it is a minor transaction that is incidental to the activities of the trust; or
 - 42.2. is at market value; or
 - 42.3. the trustee has already separately disclosed the information required by this clause to the Commissioner in a form prescribed by the Commissioner under section 35.
43. Transactions that are not required to be disclosed in the financial statements as they will be separately disclosed in a prescribed form include (this is not intended to be an exhaustive list):
- 43.1. Settlements;
 - 43.2. Distributions;
 - 43.3. Beneficiary current account balances and any movements in the account during the year;
 - 43.4. The year end balances of financial arrangements between the trust and associated persons.
44. A trustee may not have the necessary information to be able to provide all of the required details of transactions with associated persons for the 2021-22 year and, accordingly, only needs to include as much information in the financial statements for that year as they are reasonably able to provide.

59BA(2) Information required

45. Section 59BA(2) sets out the additional information trustees (who are required to file a return and are not excluded by s 59BA(3)) are required to provide for the 2021-22 tax year onwards.

59BA Annual return for trusts

(1) ...

(2) A trustee who is required to file a return for a tax year under subsection (1) and does not meet the requirements of subsection (3) must make the return

in the form prescribed by the Commissioner and include, unless otherwise required by the Commissioner,—

- (a) a statement of profit or loss and a statement of financial position:
- (b) the amount, and nature, of each settlement that—
 - (i) is not the provision to the trustee, at less than market value, of minor services incidental to the activities of the trust; and
 - (ii) is made on the trust in the income year:
- (c) the name, date of birth, jurisdiction of tax residence, and tax file number and taxpayer identification number, of each settlor who makes a settlement on the trust in the income year or whose details have not previously been supplied to the Commissioner:
- (d) the amount, and nature, of each distribution that—
 - (i) is not a distribution, other than of money, that is minor and incidental to the activities of the trust; and
 - (ii) is made by the trustee in the income year:
- (db) the name, date of birth, jurisdiction of tax residence, and tax file number and taxpayer identification number, of the beneficiary who receives a distribution referred to in paragraph (d):
- (e) the name, date of birth, jurisdiction of tax residence, and tax file number and taxpayer identification number, 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:
- (f) the other information required by the Commissioner.

59BA(2)(a) Statement of profit or loss

- 46. The financial statements required to be prepared to the minimum standards in the OIC will encompass all trust income and expenditure for the year, as prescribed by the OIC.
- 47. The following items relating to profit or loss that are required to be included in the return, using the relevant prescribed form, are a sub-set of the information captured in the financial statements:
 - 47.1. Total accounting profit before tax
 - 47.2. Tax adjustments
 - 47.3. Untaxed realised gains/receipts

48. The sum of the trust's accounting profit before tax plus tax adjustments will reconcile to the total income of the trust (which is then allocated to beneficiaries or retained as trustee income). Rather than a profit, the trust may make a loss and this will be included in the return. A loss cannot be distributed to a beneficiary but can be carried forward to the following year by the trustee.
49. Some terminology used in the return may seem more applicable to companies, such as "equity" and "drawings". These terms are used in relation to the profit and loss and statement of financial position for trusts, which are accounting documents, and are to be read in context. Thus, although legally a beneficiary may not have "equity" in a trust, for accounting purposes for the return, the "equity" is the net assets of the trust. Similarly, for "drawings", legally a beneficiary may not take "drawings" from a trust, but for accounting purposes for the return, distributions from the trust are recorded in the "beneficiary account" and the beneficiary, when receiving assets (e.g. money) from the trust, is recorded as taking "drawings" from the "beneficiary account".

59BA(2)(a) Statement of financial position

50. The financial statements required to be prepared to the minimum standards in the OIC will encompass all trust assets, liabilities and equity, as prescribed by the OIC.

51. The following items relating to assets, liabilities and equity are required to be included in the return, using the relevant prescribed form; they should be copied from the information captured in the financial statements:

51.1. Assets: Associated persons financial arrangements

- 51.1.1. This should encompass all loans **to** persons associated with the trust (excluding certain beneficiary accounts which are represented under the category "Current account year-end balances").

- 51.1.2. "Associated persons" has the same meaning as in subpart YB of the ITA. For more guidance, refer to *IR620 – Associated persons definitions for income tax purposes*.

51.2. Assets: Land

- 51.2.1. The trustee will need to value land and buildings separately. This may be done by using the apportionment used in the most recent rating valuation under the Ratings Valuations Act 1998. However, if the purchase price allocation rules in s GC 20 of ITA were

applied to determine the purchase price of an asset, then the same apportionment methodology must be used in the year the land is acquired and can be used in future years.

- 51.2.2. The valuation methodology used will need to be disclosed.
- 51.2.3. The available valuation methodologies as prescribed in the OIC are:
 - 51.2.3.1. Historical cost with impairment or depreciation as appropriate:
 - 51.2.3.2. Tax value, but only in relation to assets that produce assessable income (including income derived on the sale of the asset):
 - 51.2.3.3. Market value (which may include, as a proxy for the market value, the most recent rating valuation).
- 51.2.4. Where there is more than one asset in a particular asset category and different valuation methodologies have been applied, then the valuation method that reflects the highest proportion of assets in the category in terms of dollar value should be disclosed on the return.

Example 3 – valuation methodology

The Jane Smith Trust owns two properties. One is a residential property occupied by a beneficiary of the trust, Jane Smith, and does not produce assessable income. The other is a non-residential property rented to a third-party tenant, deriving assessable income.

The residential property is able to be valued at cost or market value, tax value is not available because the property is not used to derive assessable income. Any of the three valuation methodologies can be used for the second rented property.

The cost of the residential property was \$500,000, the most recent rating valuation valued the property at \$850,000 with a 60:40 split between land & improvements (buildings).

The trustees can choose to record the residential property at either valuation amount in their financial statements and statement of financial position, and the 60:40 split between land and buildings can be used to apportion both the

cost price or the market value for the purposes of splitting the amount into the two categories (land and buildings) listed in the financial statements and statement of financial position.

The rented property cost \$650,000 and has a current rating valuation of \$1,200,000 with a 70:30 split between land and buildings. The tax value of the property is \$647,000 because it has been subject to depreciation.

The trustees can choose to record the rented property at either of the three valuation amounts in their financial statements, and the 70:30 split between land and buildings can be used to apportion the value between land & buildings. If the asset price was already allocated between land & buildings using a different methodology at an earlier time then that methodology can continue to be used.

If the trustees choose to value the residential property at market value (\$850,000) and the rented at tax value (\$650,000 - \$3,000 depreciation claimed) and uses the rating apportionment to split the amounts between land & buildings as follows:

Residential land	$(\$850,000 * 60\%)$	\$510,000
Non-residential land	$(\$650,000 * 70\%)$	\$455,000

The total value of land recorded in the financial statements and statement of financial position will be \$965,000. The valuation methodology disclosed in the return will be market value, which reflects the methodology used for the highest proportion of value in the asset category (being the rented property).

Residential building	$(\$850,000 * 40\%)$	\$340,000
Non-residential building	$(\$650,000 * 30\% - \$3,000)$	\$192,000

The total value of buildings recorded in the financial statements and statement of financial position will be \$532,000. The valuation methodology disclosed in the return will be market value, which reflects the methodology used for the highest proportion of value in the asset category.

NOTE: if the purchase price allocation rules in s GC 20 of the ITA apply to determine the purchase price of an asset then the same apportionment methodology may continue to be used.

51.3. Assets: Buildings

- 51.3.1. As noted above, the trustee will need to value land and buildings separately and this may be done by using the apportionment used in the most recent rating valuation under the Ratings Valuations Act 1998. However, if the purchase price allocation

rules in s GC 20 of ITA were applied to determine the purchase price of an asset, then the same apportionment methodology must be used in the year that the building is acquired and can be used in future years.

51.3.2. The valuation methodology used will need to be disclosed. Refer to the comments above for the available valuation methodologies and how to disclose them on the return if more than one method has been used for an asset category.

51.4. Assets: Shares / Ownership Interests

51.4.1. The valuation methodology used will need to be disclosed. Refer to the comments above for the available valuation methodologies and how to disclose on the return if more than one method has been used for an asset category.

51.5. Assets: Total assets

51.5.1. Total assets are all assets, including amounts recorded in the above four categories.

51.6. Liabilities: Associated persons financial arrangements

51.6.1. This should encompass all loans **from** persons associated with the trust (excluding beneficiary accounts which are represented under the category "Current account year-end balances").

51.6.2. Note that beneficiary accounts payable on demand are not recorded in the "Liabilities: Associated persons financial arrangements" but are recorded in the "Current account year-end balances". These categories are found in the prescribed forms.

51.6.3. "Associated persons" has the same meaning as in subpart YB of the ITA. For more guidance, please refer to IR620 *Associated persons definitions for income tax purposes*.

51.7. Liabilities: Total liabilities

51.7.1. Total liabilities are all liabilities, including amounts recorded in the above category.

51.8. Equity:

- 51.8.1. The equity is the value of the net assets of the trust. The statement of financial position should record the equity into the following three components (owners' equity, drawings, and current account year-end balances).
- 51.8.2. The IR6G *Estate and trust return guide* provides further details around what these items are expected to represent in the return.

51.9. Equity: Owners' equity

- 51.9.1. A trust does not have an "owner" or "equity", but for the trust disclosure rules, the term "owners' equity" is used and means the total **trust corpus** and total **trust capital**.
- 51.9.2. Trust corpus is the sum of all settlements made on the trust less the sum of all distributions of trust corpus made to beneficiaries over the life of the trust. Trust capital is the net assets less the trust corpus.
- 51.9.3. A settlement that does not increase the trust corpus (because the settlement does not give rise to value that can be distributed to beneficiaries; see *59BA(2)(b) The amount and nature of each settlement* below) are not included in the statement of financial position but are included in the disclosures of settlements.
- 51.9.4. Trust capital is the sum of all taxable and non-taxable income retained and gains/losses made by the trust less the sum of all distributions of trust capital made to the beneficiaries over the life of the trust.
- 51.9.5. Owners' equity does not include beneficiary accounts as this is represented under the category "Current account year-end balances".

51.10. Equity: Drawings

- 51.10.1. Drawings in the context of a trust should reflect the total amount of funds/assets/value withdrawn from the trust by beneficiaries during the year.

51.11. Equity: Current account year-end balances

51.11.1. The current account year-end balances, in the context of a trust, should reflect the closing balance of all beneficiary accounts at the end of the year.

51.11.2. Current account year-end balances are discussed further at paragraphs [59] to [61]. Movements in beneficiary current accounts also need to be disclosed.

Opening balances

52. A trustee will need to calculate the opening balances of assets, liabilities and equity in order to calculate the closing balances for the purposes of preparing financial statements to the minimum standards prescribed in the OIC, for each year that they are required to make the s 59BA(2) disclosures.
53. The comparable figures may not be known for the 2021-22 income year and these are not expected to be included in the financial statements required by the OIC for the 2021-22 income year except to the extent that the trustee has that information.
54. Consistent with the ongoing disclosure requirements, the opening valuation of assets and liabilities should be based on:
- 54.1. Historical cost with impairment and depreciation as appropriate; or
 - 54.2. Tax value, but only in relation to assets that produce assessable income (including income derived on the sale of the asset); or
 - 54.3. Market value (which may include, as a proxy for market value, the most recent rating valuation under the Rating Valuations Act 1998).
55. The trustee can choose the valuation method but must use the same valuation method in the financial statements (OIC) and the statement of profit and loss and statement of financial position (s 59BA(2)).
56. The value of net assets, which is the equity of the trust, should reflect the difference between the value of total assets and total liabilities. For the 2021-22 tax year, the net assets should be allocated between Trust Corpus, Trust Capital and the respective Beneficiary Accounts, as accurately as possible based on known information. In future years, the trustee should be able to accurately record the opening and closing balances based on the movement in assets and liabilities.

57. Trustees will not be required to re-create records for the lifetime of the trust but will be required to value and record all the assets held by the trust as at the beginning of the 2021-22 tax year.
58. As noted above in [39], s 45 of the Trusts Act 2019 requires that trustees must keep "*records of the trust property that identify the assets, liabilities, income, and expenses of the trust*", so it is expected that going forward trustees will maintain sufficient records to calculate the opening balances of assets, liabilities, and equity for any year that they are required to prepare financial statements.

Trust beneficiary details: movements in beneficiary accounts

59. Trustees will be required to provide a reconciliation, on a line-by-line basis, from the opening to closing balance of all beneficiary accounts. For the purposes of movements in the beneficiary's account, beneficiary income that is allocated to the income year in the period after the end of the income year referred to in s HC 6(1B) of the ITA is not included the reconciliations.
60. At a minimum, the return will be required to include in relation to the reconciliation of beneficiary accounts for an income year:
- 60.1. Opening balance of the beneficiary's account
 - 60.2. ADD: Distributions
 - 60.2.1. A trustee can make distributions to beneficiaries made up of:
 - 60.2.1.1. Accounting income.
 - 60.2.1.2. Capital gains of the trust.
 - 60.2.1.3. Corpus of the trust.
 - 60.2.1.4. The provision of trust property/services at less than market value.
 - 60.2.1.5. Any debt owed by the beneficiary to the trust that has been forgiven by the trustee.
 - 60.2.1.6. Other transfers of value that vest absolutely in the beneficiary.

- 60.2.2. A trustee must disclose all distributions made by the trust during the year (not just beneficiary income as has been required in the past).
 - 60.2.3. A distribution, other than of money, that is minor and incidental to the activities of the trust does not need to be included in the financial statements or statement of financial position.
 - 60.2.4. Refer to the IR6G *Estate or trust return guide* for the different categories that the distributions are to be broken down into on the return.
- 60.3. DEDUCT: Drawings
- 60.3.1. Drawings will include:
 - 60.3.1.1. The provision of trust property enjoyed by the beneficiary (use of trust property/services for less than market value, distribution of trust assets (other than cash) and any debt owed by the beneficiary to the trust that has been forgiven by the trustee).
 - 60.3.1.2. Cash or other assets paid out from the Trust during the year.
 - 60.3.1.3. Tax paid on behalf of the beneficiary.
 - 60.3.2. The total amount of Drawings by all beneficiaries is disclosed as part of the statement of financial position in the Equity section, as discussed at [51.10].
- 60.4. EQUALS: Closing balance of the beneficiary's account
- 60.4.1. The closing balances of all beneficiary accounts is disclosed as part of the statement of financial position in the Equity section (Current account year-end balances), as discussed at [51.11].
61. A beneficiary account reconciliation will be required for every beneficiary who has had a movement in their beneficiary account during the year.

59BA(2)(b) The amount and nature of each settlement

62. For each settlement made in any income year the trustee will be required to disclose:

62.1. The amount of the settlement

62.2. The nature of the settlement

63. The **amount** of any settlement will be determined in line with s HC 4(1B) of the ITA:

HC 4 Corpus of trust

Meaning of corpus

- (1) In the trust rules, corpus for a trust means the settlement value under subsection (1B) of property settled on the trust that is not excluded by subsection (2).

Settlement value of settled property

- (1B) For property meeting the requirements of subsection (1), the value under this subsection (the settlement value) of the property settled on a trust is—
- (a) the market value of the property determined at the time of the settlement of the property, for a single settlement on the trust; or
 - (b) the total of the amounts determined under paragraph (a) for each settlement of property, if the trustee treats the settlements in the way permitted by section HC 3

Settlements excluded from corpus

- (2) Corpus does not include an amount equal to the market value of the property settlements described in subsections (3) to (5).

Settlements on other trusts

- (3) A property settlement by a trustee of another trust is excluded from corpus to the extent to which, if the property were distributed to a beneficiary of the other trust, and the beneficiary was resident in New Zealand, the distribution would be beneficiary income or a taxable distribution to that beneficiary.

Deductions

- (4) A property settlement for which the settlor is allowed a deduction is excluded from corpus.

Income or dividend

- (5) A property settlement is excluded from corpus if, but for the fact of the settlement,—
- (a) it would be income of the settlor; or
 - (b) [Repealed]
 - (c) it would fall under paragraph (a) if the settlor were resident in New Zealand at the time of the settlement.

64. For the purposes of s 59BA(2)(b) the amount of a settlement is the same amount that is recognised as corpus of the trust, which for most settlements will be the market value as prescribed by s HC 4(1B) of the ITA, unless excluded by s HC 4(2).
65. As noted in IS 18/01 *Taxation of trusts – income tax*:
- 8.83 Corpus requires a “settlement of property”. A “settlement of property” is not the same as a “transfer of value”. Some “transfers of value” do not result in the trust receiving “property”. One example is the provision of services. Although there is a transfer of value and, therefore, a settlement on the trust, there is not necessarily any property created by the provision of the services. Another example is the provision of an interest-free loan to a trust. Again, although there is a “transfer of value” and, therefore, a “settlement”, there is arguably no “property” settled on the trust. Although the trust as borrower enjoys an economic benefit from being able to enjoy the use of the loan principal for the term of the loan, this is arguably not a form of property in itself. This differs from the position that was accepted in argument by the Commissioner in Case Y25 (2008) 23 NZTC 13,270.
66. A settlement includes a settlement that the person is treated as making because the person is treated as a settlor; see s YA 1 of the ITA for the definition of settlor.
67. If there is a transfer of value (such as the provision of services at less than the market value) and therefore a settlement, but there is no property settled on the trust by that transfer of value that can be distributed, then the amount of the settlement returned under s 59BA(2)(b) will be nil.
68. Valuing such settlements as nil, there being no increase in the corpus, means there are no entries to the financial statements or statement of profit or loss and statement of financial position and, as noted, for the purposes of s 59BA(2)(b) the amount of the settlement is recorded as nil.
69. For the avoidance of doubt, this means:
- 69.1. A settlement has occurred so the “amount, and nature” must be disclosed under s 59BA(2)(b) even if the amount has been valued at nil. The details of the settlor must also be disclosed pursuant to section 59BA(2)(c).
- 69.2. There are no entries in the financial statements (OIC) or the statement of profit and loss and statement of financial position (s 59BA(2)(a)) as the amount of the settlement is nil and there is no change to the corpus.
70. Some settlements will be excluded from disclosure under s 59BA(2)(b)(i) as they are minor services incidental to the activities of the trust, or because, under s HC 27(2)(ab) of the ITA, providers of incidental services are not settlors in the first instance.

71. Although for disclosure purposes such a settlement can be valued at nil, there may be other provisions within the Inland Revenue Acts that require recognition of these transactions if recorded at less than market value.
72. The **nature** of any settlement will be classified in the return under the following categories:
- 72.1. Cash
 - 72.2. Financial arrangements
 - 72.3. Land
 - 72.4. Buildings
 - 72.5. Shares/Ownership interests
 - 72.6. Services (except those excluded under s 59BA(2)(b)(i), being the provision to the trustee, at less than market value, of minor services incidental to the activities of the trust)
 - 72.7. Other (with a description provided).
73. The trustee will need to value land and buildings separately. This may be done by using the apportionment used in the most recent rating valuation under the Ratings Valuations Act 1998.
74. Section HC 4(1B) of the ITA requires that the value of the settlement is the market value at the time of the settlement. For land, this may include, as a proxy for the market value, the most recent rating valuation under the Rating Valuations Act 1998.
75. This information is required to be disclosed for any settlements made from the 2021-22 income year onwards (unless otherwise required under s 59BAB).
76. Examples in the return of "Other" types of settlements include settlements of asset types not specifically listed, and the provision of low/no interest loans from a settlor to the trust.
77. The Commissioner does not require the individual amounts and nature of each settlement but requires the annual amount of settlements in each category in the return.

Example 4 – settlement of non-cash assets on a trust

John Smith owns a residential rental property and decides he would like to move the ownership of this asset to a trust structure. John has owned the property since before the introduction of the Brightline property rules.

John establishes the John Smith Trust and gifts the property to the trust. This gift is considered a settlement.

The original cost price of the property to John was \$450,000. The tax value is also \$450,000 because the property has not been depreciated. The market value, using the most recent rating valuation as a proxy, is \$780,000.

The s HC 4(1B) value of the settlement is \$780,000, this is the amount that must be included as the corpus of the trust in the financial statements and statement of financial position, notwithstanding the fact that the OIC may allow for alternative valuation methodologies to be used.

The value of the property needs to be split between land and buildings. The trustees can use the apportionment used in the rating valuation to apportion the amount. In this instance the rating valuation allocated a 60:40 split between land and improvements.

Recognition: The trustee will record the following in the financial statements and statement of financial position:

DR Asset: Land	\$468,000
DR Asset Buildings	\$312,000
CR Equity: Trust Corpus	\$780,000

Disclosure:

- Amount of the settlement: \$468,000
- Nature of the settlement: Land
- Amount of the settlement: \$312,000
- Nature of the settlement: Buildings

Minor Services

78. A settlor of a trust is a person, who at any time, provides, for less than market value, services to the trust or for the benefit of the trust that are more than incidental to the operation of the trust; see s HC 27(2)(ab) of the ITA.
79. The provision of minor services incidental to the activities of the trust does not need to be disclosed as a settlement; see s 59BA(2)(b)(i). The services must be both minor services and incidental to the operation of the trust. Examples of services that are incidental to the operation of a trust include attending trust meetings and reviewing trust documents. An example of a service that is not incidental to the operation of a trust is the day-to-day management of a business carried on through a trust.
80. For further information see [2.45] -[2.50] in IS 18/01 *Taxation of trusts – income tax*.

Interest not paid to beneficiary who is owed an amount may be a settlement

81. Any beneficiary who is owed an amount by the trust, including a beneficiary account, that exceeds \$25,000 at the end of an income year and is not paid interest at the prescribed or market rate becomes a settlor of the trust pursuant to ss HC 27(2)(bb) and HC 27(6) of the ITA:

HC 27 Who is a settlor?

...

Meaning of settlor

- (2) A settlor of a trust is a person who, at any time, -

...

(bb) is a beneficiary of the trust who is owed money by the trustee and does not meet the criteria of subsection (6):

...

...

Beneficiaries owed money by trustees

- (6) When a trustee of a trust owes an amount to a beneficiary of the trust, the beneficiary does not become a settlor of the trust under subsection (2) solely as a result of being owed the amount if—

- (a) the amount owing at the end of the income year is not more than \$25,000:

- (b) the amount owing at the end of the income year is more than \$25,000 and the trustee pays to the beneficiary, for each income year in which the amount is owing and by the date given for the income year by section HC 6(1B), interest on the amount at a rate equal to the prescribed rate of interest or the market rate.

82. For the purposes of the financial statements and the statement of financial position, there is no change to the net assets of the trust as a result of such a transaction. There is a settlement but there is no property settled on the trust that can be distributed.
83. For the purpose of s 59BA(2)(b), a trustee will be required to disclose the details of the settlor and the nature of the settlement, however the amount of the settlement will be recorded as nil.
84. If a trustee of a trust owes a beneficiary:
- 84.1. less than \$25,000, or
 - 84.2. more than \$25,000 but pays interest at a rate equal to the prescribed rate or market rate

the beneficiary is not a settlor and there is no information to disclose under s 59BA(2)(b). The prescribed rate of interest is defined in s YA 1 of the ITA.

Example 5 – beneficiary current account exceeds \$25,000

The Trevor Tan Trust makes a \$50,000 distribution to Timmy Tan during the 2021/22 tax year. The amount is credited to Timmy's beneficiary account, but he has not withdrawn the funds from the Trust.

Disclosure: Distribution nature & amount, and details of the beneficiary

The trust will disclose the nature and amount of the distribution, along with Timmy's details (name, date of birth, tax file number and jurisdiction of tax residency).

Recognition: Movements in trust capital & beneficiary account

The trust will record the transaction as a movement in both the trust capital and beneficiary accounts as follows:

Dr Trust capital – distribution

CR Beneficiary account – distribution

As there are no other transactions against Timmy’s beneficiary account for the year the closing balance will be \$50,000.

Disclosure: Settlement nature & amount, and details of the settlor

As Timmy is owed more than \$25,000 at the end of the year and no interest was paid by the trust on the amount, he is has made a settlement.

The trustee will disclose:

- Timmy’s details (name, date of birth, jurisdiction of tax residency and TFN/TIN);
- The nature of the settlement (using the category “Other – interest not charged”);
- The amount of the settlement will be recorded as nil.

No transaction will need to be recognised against the Trust Corpus in the financial statement of the trust.

85. Pursuant to s HC 14(2B) of the ITA if a trustee pays interest to a beneficiary on an amount owed to the beneficiary, the payment is not a distribution by the trustee except to the extent to which the interest exceeds the amount given by the rate that is the greater of the market rate and the prescribed rate of interest.

Example 6 – beneficiary paid interest in excess of market rate

For the **2022/23** tax year the Trevor Tan Trust owes its beneficiary, Timmy Tan \$50,000. The trust pays Timmy interest on the balance at a rate of 8%.

The market rate of interest for the year was 5%.

The \$4,000 of interest was paid in cash to Timmy during the year. There are no other transactions against Timmy’s beneficiary account for the year.

Application of section HC 14(2B): As the trust has paid interest at a rate higher than the applicable market rate, the excess over the market rate is treated as a distribution

Actual interest paid @ 8%	\$4,000
Market rate of interest @ 5%	<u>\$2,500</u>
Deemed distribution amount	<u>\$1,500</u>

Recognition: The trust will record the interest amount as an expense (whether or not the interest is deductible will be subject to the usual deductibility tests). The amount of interest that exceeds the applicable market rate is treated as a distribution.

CR Cash/Bank	\$4,000
DR Interest expense	\$2,500
DR Trustee income/Trust Corpus/Trust Capital	\$1,500
CR Beneficiary account (distribution)	\$1,500
DR Beneficiary account (drawings)	\$1,500

Disclosure: Distribution nature and amount, and details of the beneficiary

The trust will disclose the nature and amount of the distribution (\$1,500), along with Timmy's details (name, date of birth, jurisdiction of tax residency and TFN/TIN).

As there are no other transactions against Timmy's beneficiary account for the year the closing balance will be \$50,000.

59BA(2)(c) Settlor details

86. Section YA 1 of the ITA defines a "settlor" as being defined in s HC 27 of the ITA:

HC 27 Who is a settlor?

...

Meaning of settlor

- (2) A settlor of a trust is a person who, at any time,-
- (a) transfers value—
 - (i) to the trust; or
 - (ii) for the benefit of the trust; or
 - (iii) on terms of the trust:
 - (ab) provides, for less than market value, services to the trust or for the benefit of the trust that are more than incidental to the operation of the trust:

- (b) provides financial assistance to the trust or for the benefit of the trust with an obligation to pay on demand, and the right to demand is not exercised or is deferred:
- (bb) is a beneficiary of the trust who is owed money by the trustee and does not meet the requirements of subsection (6):
- (c) is treated as a settlor under section HC 28.

87. The definition of settlor in s YA 1 of the ITA is slightly modified when it relates to minor beneficiaries (ss HC 36 and 37 of the ITA) and for certain associated persons tests (s YB 10 of the ITA defines a settlor for the purposes of ss YB 7 to YB 9 of the ITA).
88. For every settlor of the trust the trustee will be required to disclose:
- 88.1. Name of the settlor
 - 88.2. Date of birth / commencement date of the settlor
 - 88.3. Jurisdiction of tax residence of the settlor
 - 88.4. Tax File Number or Taxpayer Identification Number of the settlor.
89. If the settlor is a natural person, the date of birth is required. If the settlor is a company or another trust, then the "date of birth" is the incorporation date of the company or the initial settlement date of the trust; this is referred to as the "commencement date" of the settlor.
90. The Tax File Number (TFN) is the identification number that the Commissioner allocates to a person; see definition in s 3. The Taxpayer Identification Number (TIN), for a person in a jurisdiction other than New Zealand, is the functional equivalent of the person's tax file number in that jurisdiction; see definition in s 3.
91. This information is required to be disclosed for each settlor:
- 91.1. who makes a settlement on the trust during the income year, from the 2021-22 income year onwards, or
 - 91.2. whose details have not previously been supplied to the Commissioner.
92. A trustee is required to disclose the four items listed at [88] for each settlor who makes a settlement on a trust during the 2021-22 income year or future income

years. This means that if a trustee files a return under s 59BA for an income year, the four items listed at [88] will need to be included for all settlors in that income year.

93. A trustee is required to disclose the four items listed at [88] for each settlor whose details have not been previously provided to the Commissioner. This will include settlors prior to the 2021-22 income year and settlors in an income year where the trustee is not required to file the further information with a return under s 59BA(2). This means that any settlors in an income year for which the trustee does not file a s 59BA return (including years prior to 2021-22) will need to be included in the next return that the trustee files.

Example 7 – details of settlors

Socks and Boots Trust was settled by Lane Boots and Kane Socks in 2000 for the purpose of running a clothing shop. In January 2022, Jane Socks transfers a car to the trust for use in the business.

For the 2021–22 income year, the trustee of Socks and Boots Trust must provide the details of Jane Socks as a settlor in the current income year, and also the details of Lane Boots and Kane Socks as settlors whose details have not previously been provided to the Commissioner.

The trustee must also provide details on the amount and nature of the settlement Jane Socks made in the 2021–22 year.

Initial disclosure of historical settlors

94. Inland Revenue acknowledges that some trusts may have been in existence for many years, the trustees may have changed over time or sufficient records have not been retained to determine all the settlors (or “deemed” settlors) of the trust.
95. However, where a settlement has occurred prior to 2020-21, including “deemed” settlements, the details of the settlor must still be disclosed if they have not previously been provided to the Commissioner.
96. In recognition of the practicalities of making the disclosure of these historical settlors, Inland Revenue only expects trustees to disclose details based on the records held of those settlors. If, for example, they hold the name of a settlor but none of the other required details and that information cannot be reasonably obtained, then disclosure of the name will be sufficient.

97. For any settlement in the 2021-22 year or later years, the trustee will be expected to make a full disclosure of the amount and nature of settlements and the full details of those settlors (name, date of birth, jurisdiction of tax residence and TFN/TIN).

Disclosure of settlor details when settlement made in a year where there is no assessable income

98. If a settlement on the trust is made in a year in which a trustee does not derive assessable income (and therefore does not have to file a return), or the trustee is excluded by s 59BA(3) from providing the s 59BA(2) information, the trustee will be required to provide the details of the settlor when the trustee files the next return.
99. This means, for example, that if a trustee does not have to file a return for the 2021-22 year, they will be expected to provide the details of any settlors in that year if and when they next file a return in a future year.

59BA(2)(d) Distributions and details of beneficiaries

100. A “distribution” is defined in s HC 14 as being a transfer of value by a trustee to a person because the person is a beneficiary of the trust. A distribution is made when what is transferred vests absolutely in interest of the person or is paid to the person.

HC 14 Distributions from trusts

Transfers of value

- (1) A trustee makes a distribution when the trustee transfers value to a person because the person is a beneficiary of the trust.

Transfers to other trusts included

- (2) Despite subsection (1), a settlement for the benefit of a beneficiary is treated as a transfer of value only—
- (a) if the amount or the property being settled would have been beneficiary income of, or a taxable distribution to, a beneficiary, had it been distributed at the time to a beneficiary resident in New Zealand; or
 - (b) when sections EW 50 or EZ 39 (which relate to forgiveness of debt) applies, if the property being settled is an amount forgiven and treated as paid as described in section EW 44(1) or (2) (Consideration when debt forgiven for natural love and affection) or EZ 39(1).

Payment of interest at rate above market rate not distribution

- (2B) If a trustee pays to a beneficiary interest on an amount owed to the beneficiary, the payment is not a distribution by the trustee except to the extent to which the interest exceeds the amount given by the rate that is the greater of the market rate and the prescribed rate of interest.

When distribution made

- (3) A distribution is made when what is transferred—
- (a) vests absolutely in interest in the person; or
 - (b) is paid to the person.

Manner of distribution

- (4) A distribution may be made directly or indirectly, or by 1 transaction or a number of transactions, whether related, connected, or otherwise.

Nil value of beneficiary relationship

- (5) The fact that a person is, or will become, a beneficiary of a trust does not constitute the giving or receiving of value.

101. For every beneficiary of the trust who receives a distribution from the trust during the income year, from the 2021-22 income year onwards, the trustee will be required to disclose:

101.1. The amount, and nature, of the distribution

101.2. Name of the beneficiary

101.3. Date of birth / commencement date of the beneficiary

101.4. Tax jurisdiction of the beneficiary

101.5. TFN or TIN of the beneficiary

102. Distributions, other than of money, that are minor and incidental to the activities of the trust do not need to be disclosed.

103. The disclosure of distributions and details of recipient beneficiaries will be captured on the IR6B *Estate or trust beneficiary details*. The IR6B will also capture all movements in beneficiary accounts (discussed at [59] to [61]).

104. Any beneficiary income allocated to the income year in the period after the income year as allowed by s HC 6 (1)(b) of the ITA is not a distribution in the income year, it

is a distribution in the following year. The distribution and the beneficiary income allocation will be recorded in different sections of the IR6B, and only those distributions in the income year will be returned in that income year's return.

105. The **amount** of any non-cash distribution will be determined with reference to the tax value, historical cost or market value of the asset, the valuation methodology being determined by the trustees in accordance with the minimum standards for the financial statements required by the OIC.
106. In relation to non-cash distributions, such as the provision of services, interest free loans, or the use of assets by beneficiaries at no cost, a transfer of value, and therefore a distribution, has occurred. However, if there has been no reduction in the net assets of the trust, the trustees can choose to value the distribution as nil.
107. To meet the disclosure requirements of s 59BA(2)(d) the trustees must disclose the amount, and nature, of the distribution and the details of the beneficiary receiving that distribution.
108. If a distribution is made to more than one beneficiary jointly, then the distribution should be apportioned between the beneficiaries who receive it and the trustee needs to disclose the separate distributions.
109. This information is required to be disclosed for any distribution made from the 2021-22 income year onwards (unless otherwise required under s 59BAB).
110. If the beneficiary is a natural person, their date of birth is required. If the beneficiary is a company or another trust, the incorporation date of the company or the initial settlement date of the trust is required. This is referred to as the "commencement date" of the beneficiary.

Example 8 – use of trust assets by a beneficiary

The trustees of the John Smith Trust are required to file a return under s 59BA as they derive assessable income from the Trust's rental property portfolio.

Use of one of the properties is provided to Julie Smith, a beneficiary of the trust, at no cost.

An equivalent property is rented to a third party for \$600/week. The trustee can choose to use this market value as the basis for determining the amount of the beneficiary distribution, or they can value the distribution at nil as there has been no reduction in the net assets of the trust, either valuation methodology will meet the minimum standards for financial reporting.

If the trustee chooses to record the value of the provision of property at nil

Recognition: There is no requirement to record anything in the financial statements and statement of financial position:

Disclosure:

- Amount of the distribution: \$nil
- Nature of the distribution: Use of trust property for less than market value
- Details of the beneficiary

If the trustee chooses to record the value of the provision of property at market value

Recognition: The trustee will record the following in the financial statements and statement of financial position and reflect the same as a movement in the beneficiary's current account:

DR Beneficiary Account: Distribution	\$31,200
CR Beneficiary Account: Drawings	\$31,200

The equivalent reduction in the beneficiary account recognises that the value of the benefit has been enjoyed by the beneficiary during the year.

Disclosure:

- Amount of the distribution: \$31,200
- Nature of the distribution: Use of trust property for less than market value
- Details of the beneficiary: Julie Smith

Example 9 – debt forgiveness by a trustee to a beneficiary

The trustees of the John Smith Trust are required to file a return under s 59BA as they derive assessable income from the Trust's rental property portfolio.

Some years ago, the Trust lent Craig Smith, a beneficiary of the trust, \$200,000. Over time Craig has repaid some of the loan but as at 1 April 2021 the balance was \$125,000.

During the year the trustees decided to forgive this debt, so Craig no longer needs to repay it.

The forgiveness of the debt is a distribution to the beneficiary.

Recognition: The trustees will have recorded the value of the loan in the financial statements and statement of financial position of the Trust under the category "Associated persons financial arrangements". When the debt is forgiven:

DR Beneficiary Account: Distribution	\$125,000
CR Associated persons financial arrangements	\$125,000

Disclosure: The trustees will disclose:

- Amount of the distribution: \$125,000
- Nature of the distribution: Forgiveness of debt
- Details of the beneficiary: Craig Smith

Minor beneficiaries

111. Allocations of beneficiary income that the minor beneficiary rule applies to are treated as trustee income, unless one of the exceptions apply; see s HC 35 of the ITA.

HC 35 Beneficiary income of minors

When this section applies

- (1) This section applies when a person who is a minor derives an amount of beneficiary income from a trust in an income year. Subsection (4) and sections HC 36 and HC 37 override this subsection.

Treatment of amount derived

- (2) The amount is—
- excluded income of the minor under section CX 58 (Amounts derived by minors from trusts);
 - treated as trustee income for the purposes of determining the rate of tax that applies, who pays the relevant tax, and who provides the return of income.

Meaning of minor

- (3) For the purposes of this section, and sections HC 36, HC 37, LE 4, and LF 2 (which relate to the treatment of tax credits of beneficiary minors), a minor is

a natural person resident in New Zealand who is under 16 years of age on the trust's balance date for the income year.

Exclusions

- (4) This section does not apply—
- (a) if the total amount of beneficiary income that the minor derives from the trust in the income year is \$1,000 or less; or
 - (b) to beneficiary income derived—
 - (i) from a trust settled in the way described in section HC 36:
 - (ii) from a testamentary trust described in section HC 37:
 - (iii) from a Maori authority:
 - (iv) directly from a group investment fund:
 - (v) by a person for whom a child disability allowance is paid under the Social Security Act 2018.

Relationship with other provisions

- (5) This section overrides sections HC 5, HC 18 to HC 20, HC 22, HC 23, and HC 32.

112. For the purposes of recording the movements in beneficiary accounts of minors in the IR6B the following approach should be taken:

112.1. Allocations of beneficiary income to which the minor beneficiary rule does not apply should be recorded as "Beneficiary Income".

112.2. Allocations of beneficiary income to which the minor beneficiary rule does apply should be recorded as "Distributions".

Example 10 – movements in beneficiary accounts of minors

In the 2021-22 tax year the trustees in the Cathy Clarke Trust make a \$10,000 distribution to each of the trusts' three beneficiaries:

Cathy Clarke, aged 42

William Clarke, aged 43

Claude Clarke, aged 12

The amounts are not paid out in cash but are credited to the respective beneficiaries' current accounts.

Under s HC 35 Claude Clarke is a minor beneficiary so the minor beneficiary rule applies.

Recognition: The trustee will record the following in the financial statements and statement of financial position, and reflect the same as movements in the beneficiaries' current accounts:

DR P&L: Trustee income	\$20,000
CR Equity: Beneficiary account – Distribution (Cathy)	\$10,000
CR Equity: Beneficiary account – Distribution (William)	\$10,000
DR Equity: Trust Capital	\$10,000
CR Equity: Beneficiary account – Distribution (Claude)	\$10,000

Disclosure:

- Amount of the distribution: \$10,000
- Nature of the distribution: Accounting income
- Details of the recipient of the distribution – Cathy
- Amount of the distribution: \$10,000
- Nature of the distribution: Accounting income
- Details of the recipient of the distribution - William
- Amount of the distribution: \$10,000
- Nature of the distribution: Accounting income
- Details of the recipient of the distribution - Claude

59BA(2)(e) Persons with powers of appointment

113. Section 59BA(2)(e) requires the trustee, for every person who has a power under the trust to appoint or dismiss a trustee, add or remove a beneficiary or amend the trust deed (referred to as an “appointer”), to disclose:

113.1. Name of appointer

113.2. Date of birth / commencement date of appointer

- 113.3. Tax jurisdiction of appointer
- 113.4. TFN or TIN of appointer
- 114. This information is required to be disclosed for every person with any of the powers listed in s 59BA(2)(e).
- 115. If the appointer is a natural person, the date of birth is required. If the appointer is a company or another trust, the incorporation date of the company or the initial settlement date of the trust is required. This is referred to as the "commencement date" of the appointer.
- 116. If the trustee has previously disclosed the required details of an appointer, and that person retains the same power, the trustee does not need to disclose the details again. If the appointer's details change in an income year, such as the tax jurisdiction of the appointer, the updated details will need to be disclosed.

59BA(2)(f) Other information required

- 117. The Commissioner may require a trustee to provide any other information required by the Commissioner.

59BA(3) Trusts excluded from the requirement to comply with s 59BA(2)

- 118. Section 59BA(3) prescribes a list of trustees who, although required to file a return under s 59BA(1), are not required to include the information set out in s 59BA(2) in their return.
- 119. A trustee who does not have to include the information in s 59BA(2) in their return because they are a trustee listed in s 59BA(3) also does not have to prepare the financial statements set out in the OIC.
- 120. Even if a trustee derives assessable income, if they have non-active complying trust status under s 43B, they do not have to file a return.
- 121. The effect of this is that:
 - 121.1. A trustee who derives assessable income is required to file a return; s 59BA(1).
 - 121.2. With that return, information has to be included; s 59BA(2).

- 121.3. However, if the trustee is one of the trustees listed in s 59BA(3), then the trustee does not have to provide the information required by s 59BA(2). They are still required to file a return though as they derive assessable income.
- 121.4. A trustee who does not have to include the information required by s 59BA(2) in their return does not have to prepare the financial statements required by the OIC.
- 121.5. As a non-active complying trust under s 43B does not have to file a return, a trustee of non-active complying trust does not have to file a return even if they derive assessable income.

59BA Annual return for trusts

- (1) ...
- (2) ...
- (3) A trustee of a trust who is required to file a return for a tax year under subsection (1) is not required to file a return in the form required by subsection (2) if—
- (a) the trustee is excluded from the requirement to make a return by section 43B (which relates to non-active trusts):
 - (b) the trust is a foreign trust:
 - (c) the trustees of the trust are incorporated as a board under the Charitable Trusts Act 1957:
 - (d) the trust is a charitable trust registered under the Charities Act 2005:
 - (e) the trustee is eligible under section HF 2 of the Income Tax Act 2007 to choose under section HF 11 of that Act to become a Maori authority:
 - (f) the trust is a widely-held superannuation fund, as defined in section YA 1 of the Income Tax Act 2007:
 - (g) the trust is an employee share scheme that is an exempt ESS, as defined in section YA 1 of the Income Tax Act 2007:
 - (h) the trustee is a debt funding special purpose vehicle, as defined in section YA 1 of the Income Tax Act 2007:
 - (i) the trustee is a lines trust established under the Energy Companies Act 1992.

Foreign Trusts

122. Section 59BA(3)(b) excludes a trustee of a foreign trust from the requirement to comply with s 59BA(2). Foreign trust is defined in s HC 11 of the ITA as a trust that has not had a New Zealand resident settlor at any time since 17 December 1987. Trustees excluded from complying with s 59BA(2) as a result of s 59BA(3)(b) include:
- 122.1. A trustee required to make a return by s 59D (which relates to foreign trusts where one or more of the trustees of the trust are New Zealand tax residents).
 - 122.2. A trustee of a foreign trust, with no trustees that are New Zealand tax residents, that derives New Zealand source income.
123. Dual status trusts satisfy the s HC 11 of the ITA definition of foreign trust, so also will not be required to comply with s 59BA(2). Dual status trusts are trusts that satisfy the requirements to be a complying trust from inception but have only non-resident settlors so are also a foreign trust. For further information on dual status trusts see [8.47] – [8.51] of IS 18/01 *Taxation of trusts – income tax*.

Estates

124. IS 18/01 *Taxation of Trusts – Income Tax* (at [9.25]) clarifies that estates are not trusts:
- 124.1. The mere fact that a person has died, and an executor has been appointed to manage their estate, does not give rise to a trust relationship. Trustees and executors have different capacities (*Re Hayes* [1971] 1 WLR 758 (Ch)).
 - 124.2. However, it will often be the case that a trust will be created by will (referred to as a testamentary trust). This can occur expressly by way of a statement in a will that specific property of the deceased will be held on trust for a named beneficiary. This could also occur where property is left for a minor beneficiary that needs to be held until the beneficiary is of age.
125. OS 21/03 *Excusing estates from filing income tax returns* sets out the Commissioner's approach to determining when a trust will arise in the administration of a deceased estate:
- 6. ... A trust can, and often does, arise before an estate is fully administered but administration of the estate needs to have reached the stage of the property being held by someone with the special duties of a trustee.

126. See also IS 19/04 *Income Tax – Distributions from Foreign Trusts* for further discussion on when a trust will arise in the administration of a deceased estate.
127. After the date that a trust arises in the administration of an estate, a trustee will be required to comply with s 59BA(2) if they have an obligation to file a return under s 59BA(1). However, if the trust has complying non-active status under s 43B, it will not be required to file a return.

Notifying Inland Revenue of excluded status

128. Trustees that are required to file returns but qualify, under any of the paragraphs in s 59BA(3), to be excluded from providing the information required by s 59BA(2) will need to notify the Commissioner that they are excluded on the return filed each year.
129. Trustees that meet the exclusion under s 59BA(3)(a) (complying non-active trust) will not need to file a return so will not be required to notify the Commissioner that they are excluded under s 59BA(3)(a).

59BA(4) Persons responsible for performance

130. The obligation to comply with subsections 59BA(1) and (2) lies with a trustee of a trust. If there is more than one trustee, then the obligation to comply lies with each trustee individually but only one return is to be filed.
131. If there are trustees who are not New Zealand residents, then any New Zealand resident trustees are responsible for the performance of the obligations imposed by s 59BA. However, if no trustee is a New Zealand resident, then any settlor of the trust who is a New Zealand resident is responsible for ensuring the performance of the obligations imposed by s 59BA.

59BA Annual return for trusts

(1) ...

(2) ...

(3) ...

(4) If the trustee of a trust is a non-resident, a settlor of the trust who is a New Zealand resident is responsible for ensuring the performance of the obligations imposed on the trustee by this section.

59BA(5) Variation to the requirements

132. Section 59BA(5) allows the Commissioner to vary the requirements in s 59BA(2) for a specific trustee or a class of trustees, and subsection 59BA(6) confirms that such a variation is secondary legislation.
133. Section 59BA(2) provides that a trustee required to file a return under s 59BA(1) and who does not meet the requirements of s 59BA(3) must provide the information required by s 59BA(2)(a) to (f) “unless otherwise required by the Commissioner”. If the Commissioner “otherwise require[s]” under s 59BA(2), this will be by variation under s 59BA(5).

59BA Annual return for trusts

(1) ...

(2) ...

(3) ...

(4) ...

(5) The Commissioner may vary the requirements set out in subsection (2) for a trustee or class of trustees.

(6) A variation under subsection (5) is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements)

59BAB Retrospective collection

134. Section 59BAB allows for the retrospective collection of the same information required by s 59BA.

59BAB Commissioner may require trust information for period after 2013–14 income year

(1) The Commissioner may require a trustee of a trust to provide, in the prescribed form and by the specified date, information that—

- (a) relates to the trust and a period beginning after the end of the 2013–14 income year and ending before the beginning of the 2021–22 income year; and

- (b) would be required to be provided under section 59BA if the period began after the end of the 2020–21 income year; and
 - (c) is in the knowledge, possession, or control of the trustee.
- (2) The Commissioner may issue a notice requiring the trustee of each trust having the characteristics specified in the notice to provide, in the prescribed form and by the specified date, information—
 - (a) that is described in subsection (1) and is specified in the notice; and
 - (b) is for each period that is specified in the notice and begins after the end of the 2013–14 income year and ends before the beginning of the 2021–22 income year.
- (3) If the trustee of a trust is a non-resident, a settlor of the trust who is a New Zealand resident is responsible for ensuring the performance of the obligations imposed on the trustee by this section.
- (4) A notice under subsection (2) is secondary legislation under the Legislation Act 2019.

- 135. The information may be requested for periods beginning after the end of the 2013–14 year, i.e. from the 2014–15 income year onwards, which is seven years prior to the 2021–22 income year (being the first year of disclosure required under s 59BA(2)).
- 136. Section 22 requires records to be kept for a period of seven years after the end of the income year to which the records relate. Section 22B requires trustees to retain information about certain forgiveness of debt for as long as the trust exists.
- 137. If the Commissioner requests information under s 59BAB(1), only information that is in the knowledge, possession, or control of the trustee is required to be provided.
- 138. If the trustee of a trust is a non-resident, then a settlor who is a New Zealand resident is responsible for ensuring compliance with the obligations imposed on the trustee under s 59BAB.
- 139. This Statement was signed on 6 April 2022. Rob Falk Technical Lead, Legal Services – Technical Standards

Rob Falk

Technical Lead, Legal Services – Technical Standards

References

Case References

Disputant Q v Commissioner of Inland Revenue [2015] NZTRA 22

Legislative References

Tax Administration Act 1994, sections 59BA and 59BAB

Related Rulings/Statements

Interpretation Statement 18/01 *Taxation of Trusts – Income Tax*

Interpretation Statement 19/04 *Income Tax – Distributions from Foreign Trusts*

Operational Statement 21/03 *Excusing Estates from filing income tax returns*

Tax Information Bulletin Volume 33 Number 3 (April 2021) (at pp 5-8) *Increased information required in trustees' annual returns*

Question We've Been Asked 16/03 *Goods and services tax – GST treatment of bare trusts*