TECHNICAL DECISION SUMMARY > PRIVATE RULING

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKATAUNGA TŪMATAITI

Complying trust

Decision date | Rā o te Whakatau: 29 May 2026

Issue date | Rā Tuku: 22 September 2026

TDS 26/16

Subjects | Kaupapa

This item summarises a private ruling about whether a trust was a complying trust under s HC 10(1).

Taxation laws | Ture tāke

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

Summary of facts | Whakarāpopoto o Meka

1. The Tax Counsel Office (TCO) received a private ruling application seeking confirmation that a trust was a complying trust under s HC 10(1). The trust was settled by a New Zealand resident settlor who was not a transitional resident. The trustee was a New Zealand-incorporated professional trustee company.
2. At the time of the application, the trust held cash and investment assets. It had held a majority shareholding in an overseas company, which was subsequently sold with the trust holding the sale proceeds thereafter.
3. The trustee was responsible for ensuring all tax obligations of the trust were met, including filing tax returns and maintaining compliance records.

Issue | Take

4. The main issue considered in this ruling was whether the trust was a complying trust under s HC 10(1).

Decisions | Whakatau

5. TCO concluded the trust was a complying trust in relation to any distribution under s HC 10(1).
6. The ruling was subject to the condition that the tax obligations relating to the trustee's income tax liability were satisfied for every tax year.

Reasons for decisions | Pūnga o ngā whakatau

Issue | Take: Whether the trust was a complying trust

7. Section HC 10(1)(a) requires, for the life of the trust up to the time of distribution, that:

   - no trustee income includes non-resident passive income;
   - no trustee income includes non-residents' foreign-sourced income;
   - no trustee income includes exempt income under s CW 54; and
   - the trustee's income tax obligations are satisfied for every tax year.

Non-resident passive income

8. TCO concluded that no trustee income would include non-resident passive income because such income must be derived by a non-resident. The trustee was a New Zealand-incorporated company and therefore a New Zealand resident under s YD 2.

9. As the trustee was not a non-resident, any income it derived could not constitute non-resident passive income for the purposes of s HC 10(1)(a)(i).

Non-residents' foreign-sourced income

10. Further, TCO concluded that no trustee income would include non-residents' foreign-sourced income because that concept requires the income to be derived by a non-resident.

11. Because the trustee was a New Zealand resident company, the relevant statutory requirement was satisfied.

Exempt income under s CW 54

12. TCO considered whether trustee income could include exempt income under s CW 54. Section CW 54 applies only where s HC 26 applies to foreign-sourced income derived by a resident trustee.

13. A requirement of s HC 26 is that no settlor can be a New Zealand resident who is not a transitional resident. The sole settlor was a New Zealand resident and not a transitional resident. Accordingly, s HC 26 could not apply, and no trustee income could be exempt under s CW 54.

Trustee tax obligations

14. Section HC 10(1)(a)(ii) requires the trustee's income tax obligations to be satisfied for every tax year during the life of the trust up to the time of distribution.

15. TCO addressed this requirement by imposing a condition in the ruling that the tax obligations relating to the trustee's income tax liability are satisfied for every tax year.

Overall conclusion

16. TCO concluded that the trust met all requirements of s HC 10(1)(a) on the basis that:

- no trustee income derived included non-resident passive income;
- no trustee income derived included non-residents' foreign-sourced income;
- no trustee income derived included exempt income under s CW 54; and
- trustee tax obligations would be satisfied through the ruling condition.

17. The trust was therefore a complying trust in relation to any distribution under s HC 10(1).