

# Taxation of Trusts

## Reading guide for consultation purposes

The accompanying draft interpretation statement (IS) updates and replaces IS 18/01: Taxation of Trusts. IS 18/01 was 133 pages. The draft IS is 161 pages. The increase in length is largely due to using a new template with more white space which makes the statement easier to read.

This guide is intended to help readers understand the similarities and differences between the two versions at a high level.

The draft IS follows the same structure as IS 18/01. Readers familiar with IS 18/01 will notice that both statements have 13 parts and largely follow the same order in terms of topics.

The major changes are due to legislative amendments to the trust rules since IS 18/01 was published. Many of these were the result of consultation on that document and some of the changes were foreshadowed in IS 18/01. A list of amending acts is in the appendix. We have also used more plain language, corrected minor errors and updated references.

Some parts of IS 18/01 are largely unchanged, such as Parts 4 and 12. At the other end of the spectrum, Parts 10 and 11 have been completely rewritten because of the new options for trusts to make elections or voluntary disclosures to obtain complying trust status.

As is the case with IS 18/01, the focus of the statement is on the trust rules. It is beyond the scope of the document to discuss how other tax rules, such as the foreign investment fund rules and the land rules, apply to trusts.

To assist navigation between different parts, there are hyperlinks throughout the document. Press CTRL-click on the links to follow them. To get back from a link, press ALT-left arrow or if the link is to an external document, close the page.

A high-level summary of the changes in each part of the draft IS follows with a cross-reference to the list of amending acts in the appendix:

### Part 1 - Introduction

- The definition of “trust rules” has been updated to include, for example, references to the trust disclosure rules (5,7).

## Part 2 – Settlers

- A person who provides services to a trust for less than market value does not become a settlor unless the services are “more than incidental” (3).
- A beneficiary does not become a settlor if they are owed no more than \$25,000 at the end of an income year (4, 5, 6).
- Remedial changes have been made to the definition of “transfer of value” (5).
- The definition of “financial assistance” has moved and been changed to clarify that it involves a transfer of value (5).
- A method for valuing financial assistance has been inserted (5).
- A person can transfer value or provide financial assistance directly or indirectly resulting in them becoming a settlor (5).
- Whether a gift is a transfer of value for the purpose of the trust rules is not affected by the market value rules (5).
- A New Zealand resident trustee is not generally treated as a settlor of a sub-trust if all the settlors of the head-trust are non-resident (3).
- A timing issue has been clarified as to when a person is treated as a settlor if they use a company to settle an amount on a trust (5).

## Part 3 - Trustees

- A person acting as a trustee is generally acting in that capacity and not in any other capacity (1).
- Joint trustees are treated as a notional single person (5).

## Part 5 – Beneficiary income

- Income derived by a trustee that is an approved unit trust is not beneficiary income to facilitate the unwind of Bonus Bonds (6).

## Part 6 – Minor beneficiary rule

- Beneficiary income of a minor which is not subject to the minor beneficiary rule is taxed at the minor’s marginal tax rate (6).
- References to adoption in the definition of “relative” have been removed as they are redundant (9).

- The exceptions to the minor beneficiary rule do not require both sets of criteria to be satisfied (3).

## Part 7 – Trustee income

- Where a settlement is excluded from corpus and taxed to the beneficiary, it is not included in trustee income (5).
- A New Zealand resident trustee is assessable on foreign-sourced amounts if the last surviving settlor was a corporate resident here when it ceased to exist (5).
- The exemption for foreign-sourced amounts received by resident trustees applies if those amounts are trustee income (5).
- The exemption for foreign-sourced amounts received by resident trustees does not apply if an election has been made to pay tax on worldwide income (5)
- The exemption for foreign-sourced amounts received by resident trustees does not apply if beneficiary income of a minor has been treated as trustee income (5).

## Part 8 – Distributions

- Interest paid by a trustee to a beneficiary on current accounts is not a distribution if it is calculated at either the market or prescribed rate (5).
- Financial assistance provided to a beneficiary for less than market value is not subject to the ordering rules (5).
- Whether a distribution has been made to a beneficiary is determined by the actual value transferred and not the market value rules (3).
- The types of capital gains that a foreign trust can distribute tax-free have been expanded to include distributions of assets in specie to beneficiaries (3).
- The source of a capital gain or loss for a trustee is determined under the source rules as if the capital gain were an amount of income (5).
- When a trustee treats multiple settlements as being on one trust, the value of corpus is the aggregate amount of the settlements (5).
- The first ordering rule determining the make-up of a distribution is now prior year beneficiary income (5).
- When considering whether the elements of a distribution should be reordered, it is no longer a requirement that the distribution has been placed beyond the control of the trustee (5).

## Part 9 – Miscellaneous trusts

- A charity carrying on business must now be registered as a charitable entity to qualify for an income tax exemption (3).
- “Reportable income” of a deceased person can be treated as their income up to 28 days after death (9).

## Part 10 and Part 11 – Transitional situations

- Elections and voluntary disclosures can now be made so that a trust can be treated as a complying trust, which is especially relevant for settlors changing residence (3, 5, 6).

## Part 13 Compliance

- The definition of resident foreign trustee now includes trustees for charitable entities resulting in a requirement to comply with the foreign trust disclosure rules (3).
- The foreign trust disclosure rules have been amended and now apply to “foreign exemption trusts” (9).
- Disclosure rules for domestic trusts have been introduced (6, 7, 8).
- Estates can now claim non-active status (8).
- The criteria for claiming non-active status have widened (9).
- Where the imputation credit anti-streaming rule applies, a beneficiary only needs to include the reduced credit in their income (9).
- A trustee as agent for a beneficiary can retain the benefit of RWT credits to satisfy the income tax liability of the trustee on trustee income and/or reallocate the credits to another beneficiary (1).
- With the introduction of an online register, the definition of RWT exemption certificates has been repealed and replaced with the term “RWT-exempt status” (1).
- Payers of passive income, including trustees, are required to keep certain records (1).

## Appendix to reading guide – amending acts affecting the draft statement

No.	Name of amending act
1	Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018
2	Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018
3	Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019
4	Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019
5	Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020
6	Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021
7	Taxation (Income Tax Rate and Other Amendments) Act 2020
8	Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022
9	Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Act 2023