

# Trusts and information disclosures

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Trustees are required to ensure the due and proper administration of trusts for the benefit of beneficiaries. The Trusts Act 2019 has introduced a new presumption that trustees will make basic trust information available to every beneficiary. In addition to this, recent changes to tax law have broadened the disclosure requirements that apply between active trusts and Inland Revenue:

- the Trusts Act 2019, which came into full force and effect in January 2021 introduced new presumptions regarding providing basic trust information and further trust information to beneficiaries when requested
- the Taxation (Income Tax Rate and Other Amendments) Act 2020 introduced new requirements for disclosing information to Inland Revenue. From 1 April 2021, trusts must provide more information regarding trust settlements and distributions. As at June 2021 the form in which this extra information will be required to be provided has not yet been finalised.

## Information disclosure to beneficiaries

The Trusts Act 2019 introduces a new presumption that trustees will make basic trust information available to every beneficiary and will provide trust information to beneficiaries on request. Basic trust information is:

- the fact that a person is a beneficiary
- the name and contact details for each trustee
- details regarding any change of trustees (as these occur), and
- the beneficiary's right to request a copy of the terms of the trust or trust information.

At reasonable intervals, trustees are required to consider whether they should be making this information available. We recommend that trustees consider this at least annually.

The Act also recognises that in some situations it may not be advisable to make basic information available. Section 53 of the Act sets out what trustees must take into account when deciding whether to provide basic trust information and in response to requests from one or more beneficiaries for trust information. This includes factors such as:

- whether the information is confidential, either personally or commercially
- what the settlor intended when creating the trust
- the effect on the parties concerned of providing the information
- whether providing the information will damage family relationships
- the practicalities of giving information to all beneficiaries.

If, as a trustee, you believe that basic trust information should not be provided to one or more beneficiaries, or that a request for trust information should be refused, we recommend that you consult your legal advisor and document the factors which lead you to decide this.

## Information disclosures to Inland Revenue

From the 2021-22 income year onwards, trustees of complying trusts are required to provide more information in a form prescribed by Inland Revenue (IR) on their annual returns. The requirement applies to trustees of all trusts that have assessable income and are required to file a return:

- financial accounting information, including profit and loss statements and balance sheet items
- loans to related parties
- information on distributions (whether monetary or non-monetary, taxable, or non-taxable) and settlements (including transfers of value) made during the income year, including identifying information for beneficiaries such as their name, IRD number, date of birth and tax jurisdiction
- names and details of settlors from prior years (if not already disclosed to IR)

- names and details of each person who, under a trust deed, has the power to appoint/dismiss a trustee, to add/remove a beneficiary, or to amend the trust deed
- any other information required by IR (which may include details of loans to or from related parties)

Note also, IR can request the above additional information for periods up to 8 years prior to the 2021-2022 income year. This will most likely be invoked where IR identify areas of concern when reviewing the 2021-22 or later disclosures.

The increased disclosure requirements do not apply to the following, although further exclusions may come later:

- non-active trusts
- charitable trusts
- trusts eligible to be Māori authorities
- resident trustees of foreign trusts (see below)
- trusts that are treated as companies for tax purposes, eg, unit trusts. These are not required to comply with trust filing requirements because they file as a company

### **Inactive declaration**

Trustees of trusts that have no income may wish to make a non-active declaration ([IR633](#)) so that they are not required to comply with the new Inland Revenue reporting obligations.