

23 June 2025

Tax Technical
Inland Revenue Department

By email: public.consultation@ird.govt.nz

Tēnā koe,

PUB00494: Income tax – Whether money or property received by New Zealand tax residents from overseas is income from a foreign trust

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa (Law Society) welcomes the opportunity to provide feedback on PUB00494, a draft interpretation statement considering the income tax treatment of amounts of money or property that New Zealand tax residents receive from a person overseas, including through inheritance.
2. The Law Society's brief feedback is set out in the **attached** appendix. Should you wish to discuss any aspect of this feedback, please contact Aimee Bryant, Manager Law Reform and Advocacy (aimee.bryant@lawsociety.org.nz).

Nāku noa, nā



Jesse Savage
Vice President

Table of feedback

Draft IS	
Paragraph	Feedback/Recommended edit
18	The reference to IS 16/03 will need to be updated to IS 25/16.
34, Table 2	<p>This table is new, and did not appear in IS 19/04. We consider the row concerning distributions of “current year trustee income” is not correct and should not be included in the table, as distributions of current year trustee income are taxed as “beneficiary income”, and not as “trustee income”.</p> <p>Further, the accuracy of the rows concerning “foreign superannuation withdrawals” and “pensions” should be checked, as the inferences in the table concerning the New Zealand tax implications of distributions of those amounts may not be correct (in which case it might be better to delete those rows entirely, given the Interpretation Statement does not directly concern these particular types of trusts). For example, distributions comprising foreign superannuation withdrawals and pensions from a complying trust may still be taxable to the extent those amounts comprise beneficiary income. Conversely, distributions comprising foreign superannuation withdrawals and pensions from a non-complying trust would not be taxable to the extent those distributions (after applying the ordering rules) comprise non-associated person capital gains or corpus. The table seems to conflate the inclusion (or non-inclusion) of “foreign superannuation withdrawals” and “pensions” from the definition of “taxable distribution” in sections HC 15(2) and (4) as a code to taxing such amounts.</p>
64	Insert the words “in relation to” after “can owe duties”, as fiduciary duties are owed in relation to property, but not to the property itself.
79	Add the words “(of at least equivalent value)” after the words “without getting something”.
96	Add the words “, the non-resident trustee derives non-resident passive income, that income is not distributed as beneficiary income, and no election is made to pay New Zealand income tax on that amount at the trustee tax rate” immediately prior to the end of the last sentence.
111 & 112	Paragraph 112 (other than the last sentence leading to the quote) is the quoted paragraph from Laws of New Zealand which should appear after the colon in paragraph 111 (compare para 162 of IS 19/04). In addition, the edits to that quoted passage should not be made, as it is a quoted passage. Further, para 112 should begin with the last sentence of that paragraph leading to the second quoted passage from Laws of New Zealand. The word “personality” in the second quoted passage

	following para 112 should read “personalty” (it was correct in para 163 of IS 19/04).
118	At the last bullet-point, the words “in a bare trust” in brackets should read “on a bare trust”.
Example 1	<p>It would be helpful if the example also considered the position after the settlor of the “living trust” (Adam, in the example) dies, the trust becomes irrevocable, and then a distribution is made to a New Zealand tax resident beneficiary of the trust (Orson, in the example).</p> <p>Provided that the New Zealand tax resident beneficiary (Orson) does not become the sole trustee and beneficiary of the trust following the settlor’s (Adam’s) death, a trust for New Zealand income tax purposes arises at that point, and distributions made to a New Zealand tax resident beneficiary would be treated as distributions from a foreign trust for New Zealand income tax purposes.</p>
Example 5	The fact pattern should state that the Cayman Islands trustee company does not file annual IR6 income tax returns in respect of the trust, and does not pay New Zealand income tax on the income generated from the estate assets settled on the trust (calculated in accordance with New Zealand tax laws).
Fact sheet	
Page 2	The reference to IS 16/03 in the table of related documents will need to be updated to IS 25/16.
Page 20	The 4th bullet point should read “foreign investment fund income”, not “foreign investment income”.