

Family Trust obligations under the CRS

Helping you with the Common Reporting Standard as:

1. a reporting NZ financial institution family trust and/or
 2. an account holder.
-



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About this guide

You may need to provide information about your family trust, as:

1. a reporting NZ financial institution (NZFI) and/or
2. an account holder.

This guide is a high level summary to help you determine if, what and when to provide information. It covers:

- is a family trust a reporting NZFI
- managed investment entities
- non-reporting FIs
- trustee documented trust
- equity interest account holders
- debt interest account holders
- due diligence
- information collection
- reporting
- penalties



Inland Revenue has developed:

- detailed guidance about the CRS
- a flowchart to assist decision making for family trust reporting New Zealand financial institutions; and
- an account holder brochure to understand AEOI obligations (IR1033)

These are available on our website ird.govt.nz/international/exchange/crs

This brochure is **not** intended to apply to other types of trusts, such as unit trusts, charitable trusts, or foreign trusts.

If you have further questions, please contact Inland Revenue or the tax authority of your country of residence, as applicable, or seek advice from a tax agent or advisor.

Introduction to the CRS

New Zealand is among 100 countries which are using the Common Reporting Standard (CRS) for the automatic exchange of information (AEOI), to help combat global tax evasion.

This requires Reporting New Zealand Financial Institutions (NZFIs) to identify and report to Inland Revenue prescribed information about certain financial accounts they maintain that are held (and/or controlled) by relevant foreign tax residents.

The CRS applies in New Zealand from **1 July 2017**.

Inland Revenue will then send the information to the tax authority in the person(s) jurisdiction(s) of tax residence, if New Zealand has an agreement to exchange information with them.

This brochure is intended to provide a high level summary (with some exceptions) of how the CRS applies to family trusts in New Zealand, and is intended to supplement Inland Revenue's CRS guidance available via ird.govt.nz/international/exchange/crs/

The CRS applies in New Zealand from

1 July 2017



For further detail about family trusts and the CRS.
Inland Revenue's CRS guidance: Section 11.1 and 11.2

FACT

A family trust is a trust that has a beneficiary class centred on a family group.

There are no other defining features in respect of the assets they hold, or activities they carry out, that separates family trusts from other discretionary trusts.



For further detail on the treatment of trusts in the CRS in general
Chapter 6: Treatment of trusts in the CRS in the OECD's CRS Implementation Handbook (Second Edition), available via www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf

Reporting NZFI and /or Account holder?

1. Is a family trust a Reporting NZFI?

Work through three key steps:



to help determine whether a family trust is a Reporting NZFI using the commentary and examples to assist.

It also describes the CRS due diligence and reporting obligations for NZFI family trusts.

2. When is a family trust an account holder?

Understand the circumstances when a family trust will be an account holder for CRS purposes.

Read through the CRS reporting obligations of a family trust CRS account holder.

1. Reporting NZFI



There are four categories of financial institution for CRS:

1. Investment entity ("in business" and "managed" investment entities);
2. Custodial institution;
3. Specified insurance company; and
4. Depository institution.

Most of these categories require that the entity carry on a specified type of business for customers. Therefore, they will be very unlikely to apply to family trusts.

Is the family trust a "financial institution" (FI)?

However, a family trust will sometimes be a "managed" investment entity financial institution; generally when:

- the family trust derives its income primarily (50% or more) from investing, reinvesting, or trading in financial assets over the relevant period (**generally the preceding 3 periods**):

"Financial assets" include assets that can be held in an account such as shares and bonds; but would not cover non-debt direct interests in real property; and

- the family trust is managed by a financial institution:
 - eg a family trust may be managed by:
 - a financial institution corporate trustee; or
 - a financial institution fund manager;

a family trust will be "managed" by a financial institution if that institution has discretionary authority to manage the trust's assets (in whole or in part).

Example 1: When a family trust will *not* be a financial institution

Family trust A has a portfolio of assets including shares, the family home, and a rental property. Family trust A is not in business. Family trust A derives its income primarily from the rental property over the relevant period. Is Family trust A a financial institution?

No. Family trust A derives most of its income from a direct interest in rental property (a non-financial asset). Therefore, it will not be a financial institution.





Example 2: When a family trust will be a financial institution

Family trust B has a portfolio of assets including shares, the family home, and a rental property. Family trust B is not in business. Family trust B derives its income primarily from the shares over the relevant period. Family trust B organises for a financial institution provider of discretionary investment management services to manage its share portfolio. Is Family trust B a financial institution?

Yes. Family trust B derives most of its income from shares (a financial asset). Family trust B is also managed by a financial institution (the financial institution that provides discretionary financial management services for the trust).

Therefore, Family trust B is a managed investment entity financial institution.



For further detail about when a trust will be a financial institution.

Inland Revenue's CRS guidance: Section 11.1.1

Is a family trust a "New Zealand Financial Institution" (NZFI)?



A financial institution family trust will generally be a "New Zealand" financial institution if it has one or more trustee(s) who is (are) tax-resident in New Zealand.

There is one exception to this point.

A financial institution family trust will not be a NZFI if it also has one or more trustee(s) overseas and reports, for CRS purposes, to that foreign jurisdiction because the trust is a foreign tax resident in that jurisdiction.



Example 3: Application of the general rule

Family trust B from example 2 has a single trustee. The Trustee is a New Zealand tax resident.

Family trust B is a New Zealand financial institution.



Example 4: Application of the exception

Family trust C is a financial institution.

It has one trustee that is tax resident in New Zealand and another trustee that is a foreign tax resident in country B. Family trust C reports for CRS purposes in country B because it is a foreign tax resident in country B.

Therefore, family trust C is not a New Zealand financial institution.



For further detail about when a trust will be a NZFI.

Inland Revenue's CRS guidance: Section 11.1.3

Is a family trust a "Reporting NZFI"?



A NZFI family trust will be a "Reporting" NZFI for CRS purposes unless it is a non-reporting financial institution.

The type of non-reporting financial institution, that is most likely to be relevant to family trusts, is the "trustee documented trust". The trustee documented trust applies when the:

- trust is a NZFI; and
- trust has a trustee that is a financial institution¹ and the trustee agrees to perform any CRS due diligence, information collection and reporting on the trust's behalf.

It is important to note that a family trust's status as a non-reporting financial institution "trustee documented trust" is contingent on the trustee carrying out CRS due diligence and reporting on behalf of the trust.

A NZFI family trust that is not a trustee documented trust will generally be a Reporting NZFI.

A Reporting NZFI family trust will have CRS due diligence, information collection and reporting obligations.



For further detail about when a family trust will be a Reporting NZFI.
Inland Revenue's CRS guidance: Section 11.1.4

The family trust may engage a service provider to carry out these obligations on their behalf.

However, the family trust still has the legal obligations, and therefore, may be liable for penalties if the service provider does not comply with these obligations on its behalf.



Example 5: NZFI family trust is a trustee documented trust, non-reporting financial institution

Family trust D has a portfolio of assets including shares, the family home, and a rental property.

Family trust D is **not** in business.

Family trust D derives its income primarily from investing in the shares over the relevant period. Family trust D is **managed** by a financial institution corporate trustee.

Family trust D is a **financial institution**.

It engages the financial institution corporate trustee to carry out CRS due diligence, information collection and reporting on its behalf. The financial institution corporate trustee complies with these obligations.

Family trust D is a trustee documented trust non-reporting financial institution.

Although the financial institution corporate trustee will report any accounts to Inland Revenue on trust's behalf, the Family Trust D itself will still be required to be registered with Inland Revenue, for CRS purposes.



For further detail about self-certification.

Inland Revenue's CRS guidance: Section 8.1.5

For further detail about penalties that could apply.

Inland Revenue's CRS guidance: Section 9.1

¹ Our guidance "The Application of the Common Reporting Standard to corporate trustees within a professional group" sets out examples of when a corporate trustee will be a financial institution. See also Item 1 in Part 2 of Schedule 2 of the Tax Administration Act 1994.

Due diligence and reporting NZFI family trust CRS obligations

A Reporting NZFI family trust will have the following CRS obligations from **1 July 2017**.

1 July
2017

- **due diligence** obligations to identify accounts the family trust maintains that are held (and/or, in certain circumstances, controlled) by relevant foreign tax residents;
- obligations to collect the prescribed identity and financial account **information** from and about relevant foreign tax resident accounts holders and controlling persons; and
- **reporting** obligations to annually report the prescribed information about their accounts to Inland Revenue.



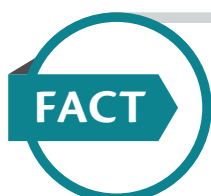
Due diligence



Account holders

A Reporting NZFI family trust will have the following account holders (assuming that it is an investment entity category of FI):

- equity interest account holders: settlors, beneficiaries (including discretionary beneficiaries that receive distributions), and any other natural persons that control the trust. This requires the looking through of any entity (settlors, beneficiaries etc) between the FI trust and their natural controlling persons, as those natural persons are the equity interest account holders of the FI trust (look through rule 1); and
- debt interest account holders: persons that have provided debt funding to the trust (including loans).



Discretionary beneficiary distribution

If a discretionary beneficiary receives a distribution in a particular period, they should be treated as an account holder in that period - and all subsequent periods, unless they are subsequently excluded from the trust.

Controlling persons

There is also the application of the [general CRS look through rule](#) applying to passive NFE account holders (look through rule 2). A Reporting NZFI family trust will also need to identify the account holder's **controlling persons** if the account holder is an entity that is a passive non-financial entity (NFE). In the context of a Reporting NZFI family trust this would most likely apply to a [debt interest](#) account holder. Please note that this look through rule is in addition to look through rule 1 (referred to above) that requires NZFI trusts to identify all natural persons that control the trust as being equity interest account holders in the first place.

This will generally occur if **both** of the following applies:

- the entity account holder is not a financial institution; and
- the entity account holder primarily (50% or more) either:
 - derives passive income; or
 - has assets that produce (or could produce) passive income.

Account types

The due diligence processes that a Reporting NZFI family trust will need to adopt will depend on when the account is opened and whether it is held by an individual or entity.

For accounts maintained as of 30 June 2017 (known as "pre-existing" accounts), the Reporting NZFI family trust will generally be able to rely on indicators in its records to determine whether the account holder (and, if the account holder is a passive non-financial entity, any controlling person) is a relevant foreign tax resident (eg a mailing or residential address in a foreign jurisdiction).

30 June
2017

For accounts opened on or after 1 July 2017 (known as "new" accounts), the Reporting NZFI family trust will generally need to ask the account holder whether they (and, if the account holder is a passive non-financial entity, any controlling person) is a relevant foreign tax resident.

1 July
2017

This is known as requesting a self-certification.

Self-certification

The Reporting NZFI family trust will need to keep a record of the self-certification and the process they used to obtain it.



For further detail about penalties that could apply.
Inland Revenue's CRS guidance: Section 9.1

Collecting information



Prescribed information

If the Reporting NZFI family trust carries out due diligence and identifies relevant foreign tax residents, it will need to collect the prescribed information about the relevant foreign tax resident account holder(s) and controlling person(s), including:

Identity information

- the person(s) name, date of birth, address
- the person(s) jurisdiction(s) of tax residence
- foreign taxpayer identification number - TIN (or the equivalent of their IRD number in the jurisdiction of foreign tax residence); and



Financial information

- the account balance; and
- the prescribed types of payments or credits to the account (or with respect to the account).



Record keeping

There are record keeping obligations under the CRS to keep and retain records, including that:

- records must be in English and retained in New Zealand
- records must be kept for seven years from the end of the relevant reporting period
- the NZFI is able to rely (in certain circumstances) on
 - publicly available information
 - documentary evidence for due diligence
- the NZFI must retain a copy of a self-certification; and
- the NZFI must use reasonable efforts to obtain a TIN.



For further detail about CRS record-keeping obligations.
Inland Revenue's CRS guidance: Section 8

Reporting



Annual reporting

Reporting NZFI family trusts will have annual reporting obligations of the prescribed information about their accounts if either of the following applies:

- the relevant foreign tax resident account holder (and/or controlling person) is tax resident in a jurisdiction that New Zealand has agreed to report to (known as "Reportable Jurisdictions"); or
- the family trust has otherwise chosen to adopt the 'wider approach' to reporting, in which case the family trust will report all of this prescribed information about their accounts held or controlled by relevant foreign tax residents.

This will involve the family trust annually reporting to Inland Revenue by 30 June the prescribed information about any reportable accounts and/or undocumented accounts they have identified for the relevant period ending 31 March (in that year).

**30
June**

The trustee of a trustee documented NZFI trust should also report in this way. Refer to example 5 on page 6 of this guide.

Inland Revenue is currently developing reporting tools and these will be available from April 2018.



For further detail about Reportable Jurisdictions.
Inland Revenue's CRS guidance: Section 1.1

For further detail about the wider approach.
Inland Revenue's CRS guidance: Section 1.5-1.6

For further detail about undocumented accounts.
Inland Revenue's CRS guidance: Section 1.6

For further detail about controlling persons.
Inland Revenue's CRS guidance: Section 1.9

For further detail about CRS due diligence.
Inland Revenue's CRS guidance: Section 5

For further detail about CRS information to be reported.
Inland Revenue's CRS guidance: Section 6

2. Account holder

Is the family trust an account holder?

A family trust will be an account holder, for CRS purposes, with obligations in New Zealand if it holds an account with a Reporting New Zealand Financial Institution (NZFI).

The family trust will be the account holder, not the trustees.

Reporting NZFI request

The Reporting NZFI may ask the family trust account holder if:

- the family trust is a relevant foreign tax resident; and
- (in certain circumstances) whether any of the trust's controlling persons (including settlors, trustees, protectors, beneficiaries, and other natural persons that effectively control the family trust) are relevant foreign tax residents. Please note that if a settlor, trustee, protector, or beneficiary is **an entity**, the controlling persons would be the natural persons that control **that entity**.



The Reporting NZFI will ask for information about the family trust's controlling persons, if the family trust is a passive non-financial entity (NFE). This will generally occur if both apply:

- family trust is not a financial institution; and
- family trust primarily (50% or more):
 - derives passive income, and/or
 - has assets that produce (or could produce) passive income.



Prescribed information

If the Reporting NZFI identifies that the family trust and/or any of its controlling persons is a relevant foreign tax resident, it will ask the family trust to provide prescribed information, including the:

- family trust's name, address, jurisdiction(s) of tax residence, and foreign TIN(s) (or equivalent); and
- person's name, address, jurisdiction(s) of tax residence, date of birth, and foreign TIN(s) (or equivalent).



Foreign TIN

The foreign tax identification number or TIN is the equivalent of the person's IRD number in their jurisdiction of foreign tax residence.

Family trust obligations as an account holder

Reasonable steps

You must take reasonable steps to respond to the Reporting NZFI and to obtain and provide any information that they request. You must also update the financial institution if there is a material change to the information you have provided.

Penalties

Penalties under the CRS law may apply if:

- you provide false or misleading information
- fail to provide this information; or
- fail to provide an update if there is a material change to the information you have provided.



Further information

For further information go to:

- Your obligations if you hold or control financial accounts IR1033
- CRS website ird.govt.nz/international/exchange/crs
- [2 min explanatory video](#)
- New Zealand – ird.govt.nz/international/
- OECD – www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/

