

Trust Tax Rate Increase

February 2024



Agenda

1. Introduction & Housekeeping
2. Timeline of Trusts – it's been a slow train coming
3. Why the changes
4. What do I need to know
5. What do I need to do
6. Questions



Trust Updates

- **Trust Act 2019 comes into force January 2021 (first major law reform in 70 years)**
 - Government signalled that Trusts were on the radar
 - Division of Trustee duties into Mandatory (must be performed) & Default Duties (can be excluded or modified)
 - Obligations on trustees in respect of disclosure of trust information to beneficiaries
 - The requirement to keep core trust records (Deed, Trust Property & Trustee decision).
- **April 2021** top personal tax rate increases to 39%
- **April 2022** additional disclosures required by IR
- **May 2023** Labour Government announce tax rate for Trusts to increase to 39% from 1 April 2024
- National Government is currently planning to continue with this increase*
- All income Received & retained by The Trustees will be taxed at a flat rate of 39%
 - Two exceptions;
 - 12 Month exemption for deceased estates (During the 12-month period the estate will be taxed at the personal tax rate of the deceased person)
 - Trusts settled for the care of a disabled person – taxed at the disabled persons personal tax rate



Why the changes?

- New Zealanders have had a love affair with Trusts.
- Vehicle used to create, grow and safeguard family wealth, and to hold intergenerational wealth.
- For Business owners, Trusts have provided protection of the family home, and savings for retirement, while keeping benefits available to the wider family.
- Relationship Property – When one partner brings a significantly higher level of wealth into a relationship.
- Tax – rarely a primary motivator but may have formed part of the equation.
- **IR** consider them a vehicle for tax avoidance.

What do I need to know?

- ❖ Income retained by the Trust will be taxed at a flat rate of 39%*
- ❖ Income distributed to beneficiaries will be taxed at their marginal tax rates
- ❖ There is no changes to the PIE tax regime. The highest rate for a PIE will remain at 28%.
- ❖ For Trusts that own shares especially in closely held companies;
 - Any Dividends declared before 31 March 2024 will be taxed at the current rate of 33%.
 - Dividends have tax credits attached (Imputation credits).
 - The higher the tax credits available, the higher the dividend that can be declared.
 - For Businesses with **terminal tax** due in **April**, or **provisional tax** due in **May**, it could be prudent to make payment prior to **March 2024**.
- ❖ Caution needs to be taken when;
 - Deciding to distribute income to beneficiaries to minimize the tax bill
 - Transferring assets to other ownership structures
- ❖ Making Decisions purely for tax purposes does not always deliver the best long-term results. The rate is changing but that doesn't mean your objectives are.

*subject to confirmation in legislation

What do I need to do

Generally

- What is the purpose of the trust, current structure & investments?
 - Estate & Succession Planning & Asset Protection & Management
 - Has it served its purpose
- Does my Trust own Shares?
 - Ensure records are up to date
 - Consider making a tax payment
 - Consider declaring a dividend prior 31 March 2024
- Does my Trust own Property?
 - What are the potential implications of transferring any assets – deemed sales, bright lines, ownership risks.

Australia (and others)– Beneficiaries & Trustees beware.

Trustees / Beneficiaries

- Review the Trust Deed – is it fit for purpose? Ability to Vary or resettle a better option?
- Check the Trust Records, record of Trust Assets, Minutes
- Trust Management (Sham)
- Who are the Beneficiaries – does it need to be narrowed? (I.e Settlor children/grandchildren, or wider family members removed)
- Are Trustees aware of Beneficiary needs?
- Do all Trustees participate in decisions and are they properly documented?
- How are Trust payments determined and documented? Consideration for equality and evidence of?
- Are all documents of the trust available to all trustees and how often are they reviewed to ensure they are relevant?
- Have trustees developed an investment policy statement to account for risk and is this monitored?
- Is there satisfactory insurance cover held to mitigate any risks?

Connacc Resources;

Blog

[Trust Tax Rate Change](#)

[Into the 21st Century](#)

E-book

[How Family Trusts Work](#)

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Q & A

