Inland Revenue
Te Tari Taake

NEW LEGISLATION > Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Act 2024 > SPECIAL REPORT

39% trustee tax rate

Issued: April 2024

This special report provides early information on the trustee tax rate changes included in the *Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024* ahead of an upcoming edition of the *Tax Information Bulletin*.

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Overview

The *Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024* (the Act) was enacted on 28 March 2024.

The Act amends the Income Tax Act 2007 (the ITA) to increase the trustee tax rate from 33% to 39% for the 2024–25 and later income years to address the under-taxation of trust income.

The new legislation also introduces:

- Measures to mitigate over-taxation, including:
    - retaining the 33% rate where trustee income for the income year does not exceed $10,000 (after deductible expenses);
    - targeted rules for deceased estates and trusts settled for disabled people; and
    - exclusions for energy consumer trusts and legacy superannuation funds.
- A measure to buttress the 39% trustee tax rate by taxing beneficiary income derived by certain close companies at the 39% trustee tax rate.

Unless otherwise specified, the focus of this Special Report is on "complying trusts".[1]

Current law

The annual income of a trust is taxed either to the trustees or to the beneficiaries of the trust.[2] Trustees of a trust are treated as a single taxable person and their trustee income is calculated separately from their personal income.[3]

Beneficiary income

Definition: Beneficiary income is all income earned by a trust in an income year that is vested absolutely in a beneficiary during the income year, or paid or allocated to a beneficiary before the later of:

- 6 months following the end of the income year, or
- the earlier of:

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[1] A complying trust is a trust where tax has always been paid in New Zealand on the worldwide income derived by the trustee and the tax obligations relating to the trustee's income tax liability have been satisfied. A complying trust is defined in section HC 10 of the ITA.

[2] Section HC 5 of the ITA.

[3] Sections HC 2 and YA 5 of the ITA.

- the date the trust files its tax return, or
- the date the trust is required to file its tax return.[4]

Income does not need to be paid to a beneficiary to be beneficiary income; the income can be allocated to a beneficiary. Provided the income is vested absolutely in the beneficiary, the income is beneficiary income and is taxed at the beneficiary's personal tax rate unless it is subject to the minor beneficiary rule. Income being "vested absolutely" is broadly equivalent to the trustees allocating the income irreversibly to a beneficiary, i.e. they cannot change their mind about the allocation.

Definition: The **minor beneficiary rule** applies to beneficiary income derived by a minor (a New Zealand resident natural person under 16 years old) from property settled on a trust by:

- a relative or legal guardian, or
- an associated person of a relative or legal guardian, unless a specific exception applies.

If the total beneficiary income derived by the minor from a trust is greater than $1,000 in an income year, the income is taxed at the trustee tax rate.[5]

The purpose of the minor beneficiary rule is to limit the tax benefits that could otherwise be achieved by distributing the income of a trust to a minor beneficiary (likely to be on the lowest marginal tax rate).

This rule addresses the concern that a minor is not economically independent from the parents or guardians who control the trust. This rule helps ensure that a family with a trust cannot gain a tax advantage over a family without one by using the income of a trust to meet the family's expenses. This is because families would be able to use a trust to meet the expenses of children from income taxed at the marginal tax rates of the children, instead of meeting those expenses from their own after-tax income.

[4] Section HC 6 of the ITA.
[5] Sections HC 35 to HC 37 of the ITA.

Table 1: Types of beneficiary income

Types of beneficiary income	Examples
Income distributed or paid to a beneficiary.	Cash transferred to the beneficiary.
Income allocated to a beneficiary by crediting the beneficiary's current account (i.e., the cash is still with the trust but can be called upon by the beneficiary).	Trustees allocating an amount to a beneficiary by making a journal entry in the trust's accounts to the beneficiary's current account.
Income that is allocated to a beneficiary for them to possess at a future date or event.	Trustees settle an amount of income on a sub-trust for a beneficiary.

Trustee income

Definition: Trustee income is all income derived by the trustees of a trust in an income year that is not beneficiary income.[6]

Once income has been taxed as trustee income, subsequent distributions of that income to the beneficiaries are tax-free.[7] That is, trustee income is subject to a final tax imposed in the year the income is derived by the trust.

Trustee's net income

Although beneficiary income is first derived by a trustee, and secondly by a beneficiary (once it has been vested in or paid to the beneficiary), it is only taxed once in the case of a complying trust (i.e. to the beneficiary).[8] Beneficiary income is included in the beneficiary's income for the purposes of calculating their net income.[9]

Beneficiary income is not included in the trustee's income the purposes of calculating the trustee's net income. However, when determining the deductions a trustee is allowed in an income year, beneficiary income is treated as trustee income. Beneficiaries are denied a

[6] Section HC 7 of the ITA.
[7] This is only the case for complying trusts (sections CW 53 and HC 20 of the ITA). Distributions of accumulated trustee income from foreign trusts are taxed at the beneficiary's personal tax rate (sections CV 13 and HC 15 of the ITA). Distributions of accumulated trustee income or capital gains from non-complying trusts are taxed at a 45% tax rate (sections CX 59, HC 15 and Schedule 1, Part A, Clause 4 of the ITA).
[8] This is only the case for complying trusts. A taxable distribution from a foreign or non-complying trust to a beneficiary may be taxed twice (e.g. first to the trustee as trustee income and again to the beneficiary).
[9] Section CV 13(a) of the ITA.

deduction for any expenditure or loss incurred by the trustee in deriving the beneficiary income.[10]

This means that the trustee's net income is determined based on only trustee income (excluding any beneficiary income) less any deductions incurred in deriving *both* trustee and beneficiary income.

Trustee's net income = **Trustee income** *less* **deductions** (from deriving both trustee and beneficiary income)

Corpus

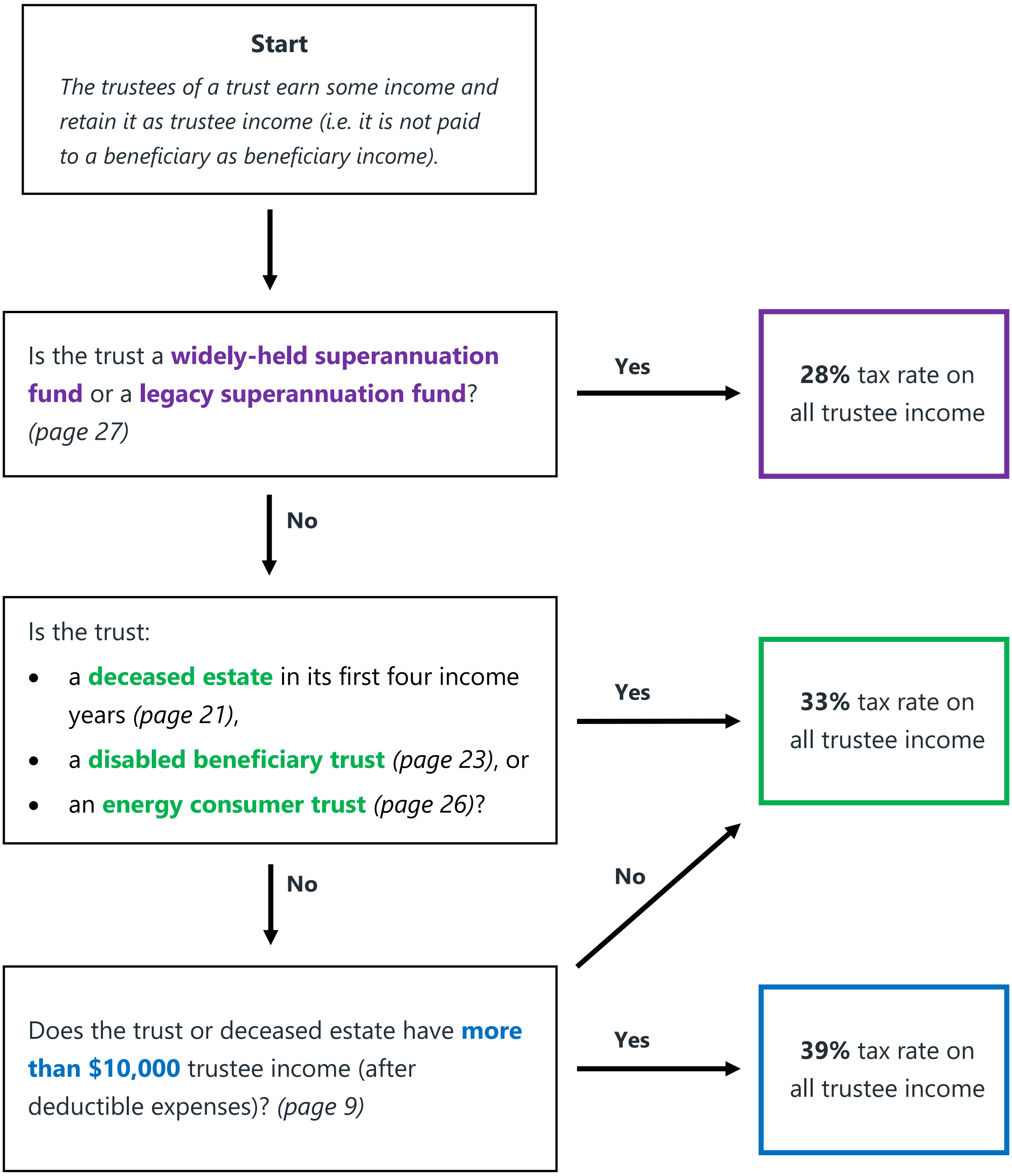
Definition: Corpus is property settled on a trust.[11]

Corpus is used to provide benefits to the beneficiaries and can be used to derive income and capital gains. Distributions of any amounts other than beneficiary income, including corpus, capital gains, or trustee income from prior years, are exempt from tax to the receiving beneficiary.[12]

[10] Section DV 9 of the ITA.
[11] Section HC 4 of the ITA.
[12] This is only the case for complying trusts (sections CW 53 and HC 20 of the ITA). Distributions of accumulated trustee income from foreign trusts are taxed at the beneficiary's personal tax rate (sections CV 13 and HC 15 of the ITA). Distributions of accumulated trustee income or capital gains from non-complying trusts are taxed at a 45% tax rate (sections CX 59, HC 15 and Schedule 1, Part A, Clause 4 of the ITA).

Trustee income flowchart

For the 2024–25 and later income years, trustee income is subject to tax at the 39% trustee tax rate to address the under-taxation of trust income, unless special rules to mitigate over-taxation apply. This flowchart provides a simplified explanation of how the different rules for trustee income interact.



Beneficiary income flowchart

Beneficiary income is subject to tax at the beneficiary's marginal tax rates, unless special rules apply. This flowchart provides a simplified explanation of how the different rules for beneficiary income interact.

Start

The trustees of a trust earn some income and distribute it to a beneficiary as beneficiary income.

Is the beneficiary a natural person under the age of 16 and subject to the **minor beneficiary rule**? *(page 11)*

Yes → Beneficiary income subject to tax at **39%**.

No ↓

Is the beneficiary a company subject to the **corporate beneficiary rule**? *(page 12)*

Yes → Beneficiary income subject to tax at **39%**.

No ↓

Beneficiary income is subject to tax at the beneficiary's **personal tax rates**.

Increasing the trustee tax rate to 39%

Sections HC 7, HC 35, HC 40 and Clauses 3 and 6B of Schedule 1, Part A of the ITA

The trustee tax rate has been increased from 33% to 39% for the 2024–25 and later income years. The 33% rate still applies if trustee income for the income year does not exceed $10,000 (after deductible expenses).

Background

The previous 33% trustee tax rate had been in place since 1989 and was intentionally chosen to align with the (then) top personal tax rate. In 2020, a new top personal tax rate of 39% for income over $180,000 was introduced for the 2021–22 and later income years. The trustee tax rate was not increased at that time.

The previous 33% trustee tax rate meant that individuals were not subject to the 39% personal tax rate on distributed tax-paid trustee income, even if they earned over $180,000 in (combined) personal income and distributed tax-paid trustee income. This **under-taxation** of trust income undermined the fairness of the tax system.

Due to the trustee tax rate being a final tax, it can also result in **over-taxation**. This does not depend on the amount of income earned by the trust, but arises when trustee income is taxed at a rate higher than the personal tax rates of the beneficiaries and settlors of the trust.

Income of a trust can be taxed at a beneficiary's personal tax rate if the income is paid or allocated to the beneficiary as beneficiary income, but this may not always be feasible.

Key features

- The trustee tax rate has been increased from 33% to 39%.
- To help mitigate over-taxation, the 33% rate still applies if trustee income for the income year does not exceed $10,000 (after deductible expenses).
- Amendments to clarify that beneficiary income subject to the minor beneficiary rule is subject to the 39% trustee tax rate have been made.

Effective date

The amendments apply for the 2024–25 and later income years (beginning 1 April 2024 for most trusts).

Detailed analysis

De minimis

Trusts with trustee income not exceeding $10,000 (after deductible expenses) are subject to a 33% tax rate on trustee income. Trusts with more than $10,000 trustee income (after deductible expenses) are subject to the 39% trustee tax rate on **all** of their trustee income.

New section HC 40 of the ITA provides that a trust is a "de minimis trust" for an income year if the trustees have no more than $10,000 net income (trustee income less deductible expenses) for that income year. A de minimis trust is subject to a 33% tax rate on its trustee income.

Any income treated as trustee income under the following rules is ignored when determining whether a trust is a de minimis trust:

- The minor beneficiary rule in section HC 35 of the ITA (see page 10).
- The corporate beneficiary rule in section HC 38 of the ITA (see page 11).

Example 1: De minimis trust

Big Bird is the sole beneficiary of an income-earning trust. Each year, the trustees earn $20,000 of income and have $2,000 of deductible expenditure.

2024–25 income year: Big Bird asks the trustees, Gonzo and Grover, for some income – he is struggling to make ends meet. They decide to distribute $12,000 to him as beneficiary income and retain the remaining $8,000 as trustee income. Gonzo and Grover can deduct expenses of $2,000, leaving net income of $6,000 (trustee income after deductible expenses). Because the net income of the trustees does not exceed $10,000, the trust is a de minimis trust, and the trustee income is taxed at 33%.

2025–26 income year: Big Bird again asks Gonzo and Grover for some income. They have heard that Big Bird hasn't spent all his money from last year, so decide to only distribute $8,000 as beneficiary income. $12,000 is retained as trustee income. After deducting $2,000 of expenses, the trustees have net income of $10,000. Because the net income of the trustees does not exceed $10,000, the trust is a de minimis trust, and the trustee income is taxed at 33%.

2026–27 income year: Gonzo and Grover hear that Big Bird again hasn't spent all his beneficiary income from the previous year. They decide to cut him off in the 2026–27 income year and retain all the income as trustee income. The trustees have $20,000 trustee income. After deducting $2,000 of expenses, Gonzo and Grover have net income of $18,000. Because the net income of the trustees exceeds $10,000, the trust is not a de minimis trust, and the trustee income is taxed at 39%.

Income year	Trustee income (after deductible expenses)	Is the trust a de minimis trust?	Tax rate on all trustee income
2024–25	$6,000	Yes	33%
2025–26	$10,000	Yes	33%
2026–27	$18,000	No	39%

Fragmentation

Eligibility for the de minimis is determined on a per-trust basis, per income year. If a person has settled multiple trusts, each trust can separately qualify as a de minimis trust.

However, settling multiple trusts, or fragmenting an existing trust into multiple trusts, to take advantage of the 33% tax rate for trustee income of a de minimis trust would raise tax avoidance concerns for the Commissioner of Inland Revenue.

Minor beneficiary rule

The "minor beneficiary rule" provides that beneficiary income derived by a minor (under 16 years old) is taxed at the trustee tax rate, unless certain exclusions apply such as:

- the total amount of beneficiary income earned by the minor from the trust in the income year is $1,000 or less,
- the trust paying the beneficiary income is a testamentary trust, or
- all settlements on the trust were made by a person who is neither a relative or guardian of the minor (nor a person associated with a relative or guardian). For further information on the specific exclusions from the minor beneficiary rule, refer to Part 6 of Inland Revenue's Interpretation Statement on the taxation of trusts: IS 24/01.

The Act amends sections HC 7(2) and HC 35(2) to clarify that beneficiary income subject to the minor beneficiary rule is subject to the 39% trustee tax rate, regardless of whether the trust is a de minimis trust.

Corporate beneficiary rule

Sections CD 44(7)(dc), CX 58B, HC 7, HC 17, HC 24, HC 38, LE 4B and YA 1 of the ITA.

Beneficiary income derived by certain corporate beneficiaries is subject to the 39% trustee tax rate and treated as trustee income for the purposes of determining who pays the relevant tax and who provides the return of income.

Background

A company can be a beneficiary of a trust. Prior to the amendments in the Act, beneficiary income paid to a corporate beneficiary was taxed at 28%. This meant that corporate beneficiaries could be used to shelter income from the higher personal tax rates of the shareholders in those companies until such time that income was distributed to the shareholders.

If the trustees of the trust making the distribution also own shares in the corporate beneficiary (in their capacity as trustees), the income allocation achieves nothing. The income effectively remains within the trust. The principal, or in many cases the only, effect of the allocation is to ensure that the income is taxed at 28% rather than the trustee tax rate. While a subsequent distribution of the income by the company to the trust will be taxable as a dividend (with imputation credits attached), such a distribution may never be made. Similar concerns arise if the shareholder of the corporate beneficiary is the settlor of the trust or a related trust.

Key features

To ensure that companies cannot be used to shelter income from the 39% trustee tax rate, the amendments introduce a “corporate beneficiary rule”. Beneficiary income earned by certain companies is subject to the 39% trustee tax rate instead of the 28% tax rate.

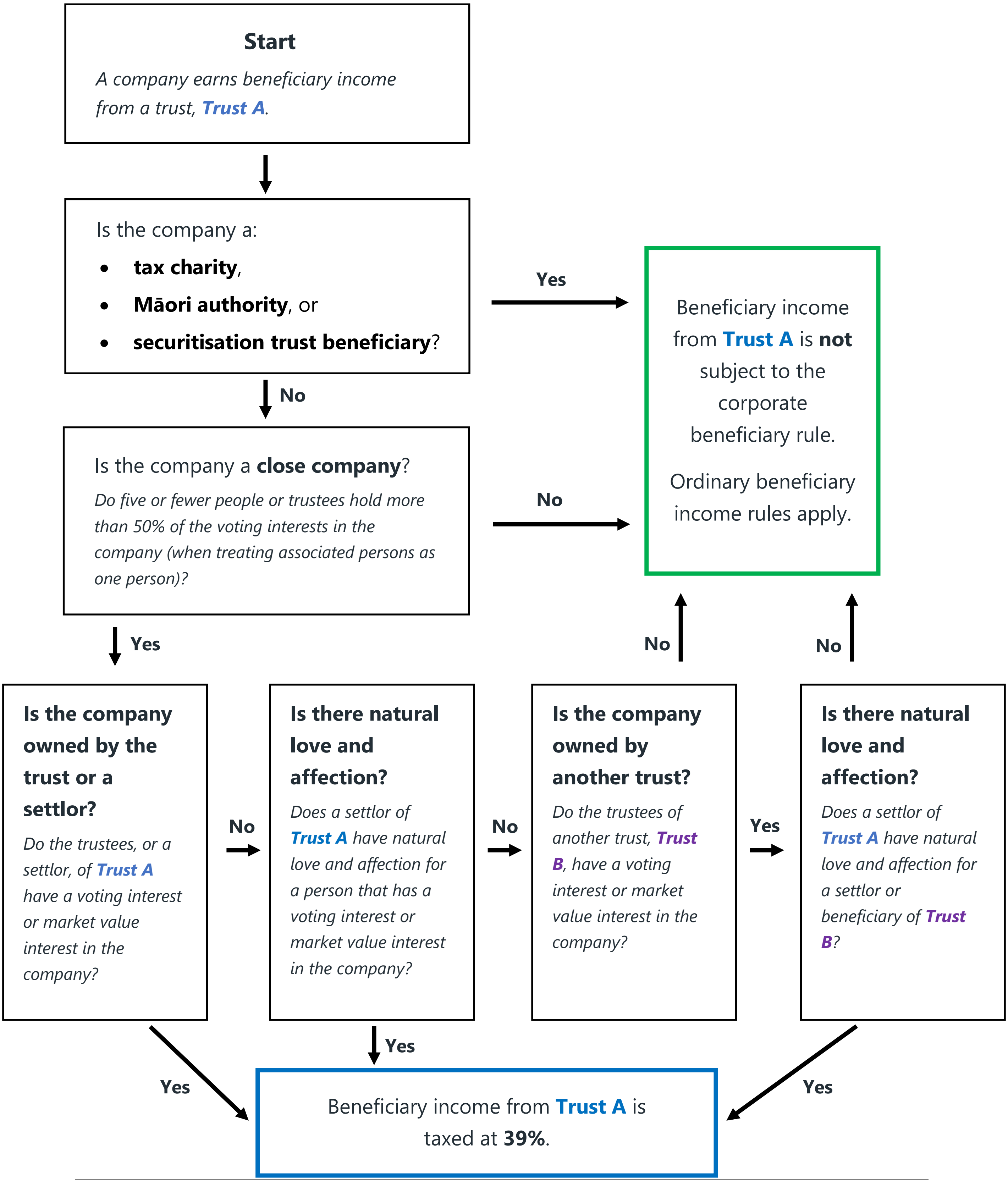
Generally, companies not subject to the corporate beneficiary rule remain taxed at 28% on beneficiary income.

Effective date

The amendments apply for the 2024–25 and later income years (beginning 1 April 2024 for most trusts).

Corporate beneficiary rule flowchart

This flowchart provides a simplified explanation of when an amount of beneficiary income earned by a company is subject to the new corporate beneficiary rule.



Detailed analysis

To buttress the 39% trustee tax rate, new section HC 38 provides that beneficiary income derived by certain corporate beneficiaries is subject to tax at the 39% trustee tax rate. Such beneficiary income amounts are also treated as trustee income for the purposes of determining who pays the relevant tax, and who provides the return of income.

Taxing beneficiary income derived by certain close companies at the 39% trustee tax rate prevents the under-taxation that would otherwise arise if the income were taxed at the corporate tax rate.

Definition: A company is a **close company** if five or fewer natural persons or trustees hold more than 50% of the voting interests in the company, treating associated persons as one person.

Definitions: Generally, a person who holds shares issued by a company will have a **voting interest** in the company. A person's **market value interest** in a company equals their share of the total market value of shares and options held in the company if there is a **market value circumstance**.

Definition: The term **natural love and affection** is used to describe the motive of a person for an action driven not by a promise of something in return, but by the natural love and affection the person has for another. Natural love and affection is generally considered to exist between relatives, whether by blood, marriage, a non-spousal domestic relationship, or adoption. It can be present between close friends as well, although not ordinary acquaintances or colleagues.

The **corporate beneficiary rule** applies if a close company earns an amount of beneficiary income from a trust (Trust A) and any voting interest or market value interest, directly or indirectly, in the company is held by at least one of the following:

- **Criteria 1:** a settlor of Trust A,
- **Criteria 2:** the trustees of Trust A,
- **Criteria 3:** a person for whom a settlor of Trust A has "natural love and affection", or
- **Criteria 4:** the trustees of another trust (Trust B), if a settlor of trust A has "natural love and affection" for a settlor or a beneficiary of Trust B.

Criteria 1 and 2: Settlor- and trustee-owned companies

The corporate beneficiary rule applies to a close company if a settlor, or the trustees, of a trust have a voting interest or market value interest in the company, directly or indirectly.

This recognises that a settlor, or the trustees, of the trust have a degree of control over the company, and it could be used to shelter income from the 39% trustee tax rate.

Criteria 3: Natural love and affection

The corporate beneficiary rule also extends to close companies where a settlor of the trust has natural love and affection for a person that holds a voting interest or market value interest, directly or indirectly, in the company. Whether a person has natural love and affection for another person is subjective and can only be considered on a case-by-case basis.

Limiting the corporate beneficiary rule to situations where a settlor, or the trustee, of a trust directly or indirectly controls a company would mean that the trustees would still be able to shelter income from the 39% trustee tax rate by allocating beneficiary income to a company that is owned by a person who is, for example, a relative or associate of a settlor of the trust.

Criteria 4: Company owned by a different trust

The corporate beneficiary rule also applies in situations where the close company is owned by the trustees of a different trust than the one paying the beneficiary income. This situation is not covered by Criteria 3 because it is not possible to have natural love and affection for trustees (even if those trustees are natural persons).

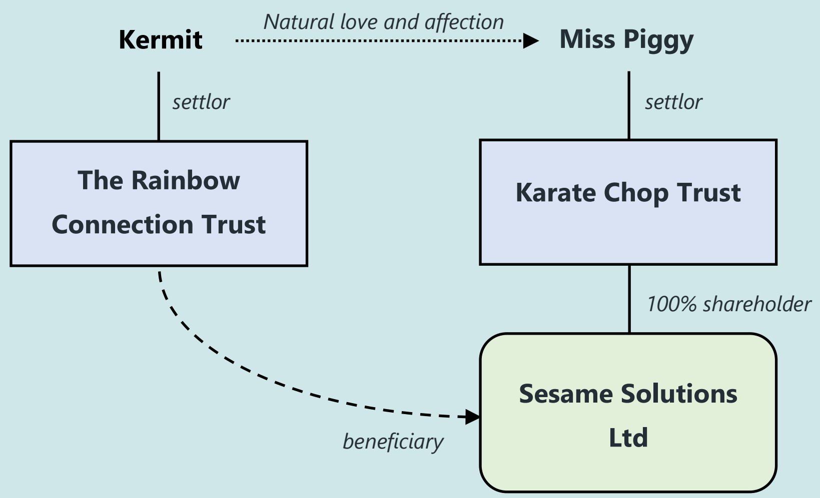
Example 2: Corporate beneficiary owned by a different trust

Kermit and Miss Piggy have natural love and affection for each other and are each separately the settlors of the Rainbow Connection Trust and the Karate Chop Trust, respectively. Karate Chop Trust is the sole shareholder of a close company, Sesame Solutions Ltd.

Since Kermit has natural love and affection for Miss Piggy, if the trustees of the Rainbow Connection Trust make Sesame Solutions Ltd a beneficiary of the trust, then the company will satisfy Criteria 4. Any beneficiary income paid by the trustees of the Rainbow Connection Trust to Sesame Solutions Ltd will be subject to the corporate beneficiary rule and taxed at 39%.

Sesame Solutions Ltd is a close company and is not a registered charity, Māori authority, or the beneficiary of a securitisation trust, so is not excluded from the corporate beneficiary rule.

Example 2 continued: Corporate beneficiary owned by a different trust



Available capital distribution amount

New section CD 44(7)(dc) provides that income subject to the corporate beneficiary rule is a capital gain amount in the formula for determining the available capital distribution amount (ACDA) for a share on liquidation of the company. This means that the amount of ACDA will be increased on liquidation of the company so that the income subject to the corporate beneficiary rule is not subject to tax again if it is distributed to the shareholders on liquidation.

For most companies, capital gains cannot be distributed 'tax-free' to shareholders until liquidation, so any distribution (other than on liquidation) of corporate beneficiary income by the company will be subject to the ordinary dividend rules and subject to tax in the shareholders' hands.

Excluded income

New sections CX 58B and HC 38(2)(a) provide that beneficiary income subject to the corporate beneficiary rule is excluded income in the hands of the corporate beneficiary. This is consistent with the treatment of minor beneficiary income in sections CX 58 and HC 35.

No imputation credit

A company will not receive an imputation credit for any tax paid by the trustees on an amount of beneficiary income subject to the corporate beneficiary rule.

Use of tax credits

New section LE 4B ensures that the trustees can use tax credits to satisfy the tax liability on beneficiary income subject to the corporate beneficiary rule. This treatment mirrors the existing provision in section LE 4 for income subject to the minor beneficiary rule.

Exclusions

Dividends within a wholly-owned group

Section HC 38(3)(b) provides that the corporate beneficiary rule does not override the inter-corporate dividend exemption in section CW 10. The inter-corporate dividend exemption provides that a dividend is exempt income if it is paid between NZ resident companies within the same wholly-owned group.

If a trustee derives an amount of income that is of a particular character in the hands of the trustee, the income will retain this character in the hands of the beneficiary when the amount becomes beneficiary income. This means that if a trustee earns dividend income and distributes that income as beneficiary income, it will retain its character as dividend income for the beneficiary.

Example 3: The corporate beneficiary rule and dividends within a wholly-owned group

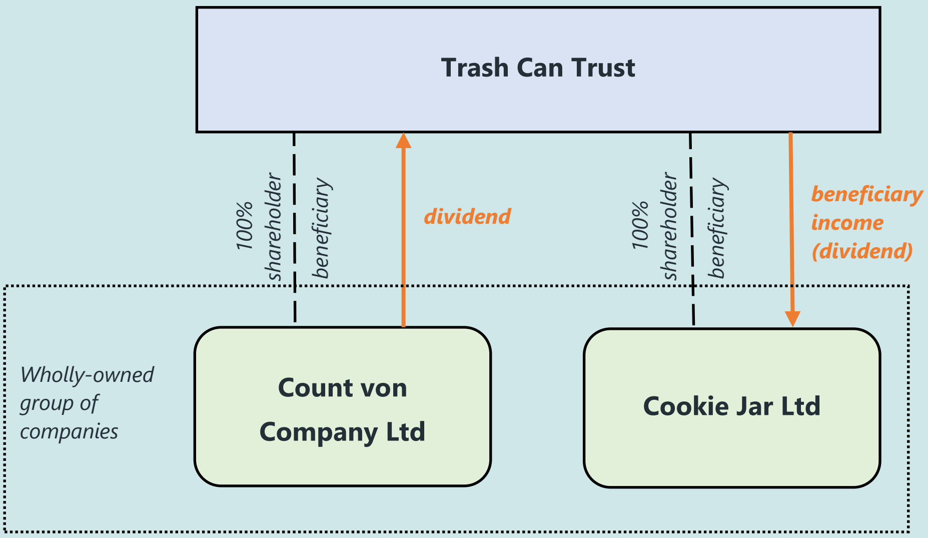
Oscar the Grouch, Count von Count, and Cookie Monster are the trustees of the Trash Can Trust. The trustees are the sole shareholders of the companies Count von Company Ltd and Cookie Jar Ltd. Both companies are beneficiaries of the trust.

Count von Company Ltd pays a dividend of $100 to Trash Can Trust, and the trustees decide to distribute the $100 to Cookie Jar Ltd as beneficiary income. Since beneficiary income retains its character, the income is dividend income in the hands of Cookie Jar Ltd.

Count von Company Ltd and Cookie Jar Ltd are both wholly-owned by the trustees of the Trash Can Trust. They have 100% common voting interests, so are a wholly-owned group of companies.

The dividend from Count von Company Ltd to Cookie Jar Ltd, via Trash Can Trust, satisfies the inter-corporate dividend exemption requirements in section CW 10 since it was paid within a wholly-owned group of companies. This means that the dividend is exempt income for Cookie Jar Ltd and not subject to the corporate beneficiary rule.

If imputation credits (and/or RWT) were attached to the dividend by the paying company, Count von Company Ltd, then a credit will arise in the imputation credit account of the recipient company, Cookie Jar Ltd.



Securitisation trusts

Section HC 38(1B)(c) excludes securitisation trust beneficiaries from the corporate beneficiary rule. This helps ensure that the rule does not impact the use of trusts in the securitisation industry. To achieve this, the amendments introduce three new definitions in section YA 1.

Definition: A trust is a **securitisation trust**, for an income year, if from the establishment of the trust to the end of the relevant income year, the trust has only one beneficiary and that beneficiary is a company, and at all times during the income year, the trust:

(a) operates to do one or more of the following:

- (i) guarantee liabilities of a financial institution (**person A**), who transferred some or all of their assets to the trust:
- (ii) guarantee liabilities of a company, incorporated in and resident in New Zealand, that is a member of a wholly-owned group of companies that includes person A:
- (iii) raise funds by issuing securities backed by its assets:
- (iv) raise funds by borrowing money backed by its assets; and

(b) has interests in assets for the sole purpose of carrying out the trust's operations described in paragraph (a); and

(c) receives only funds that—

- (i) are used to acquire assets as described in paragraph (b):
- (ii) are derived from assets described in paragraph (b); and
- (iii) are incidental to the trust's sole purpose described in paragraph (b); and

(d) derives no exempt income; and

(e) is a New Zealand resident; and

(f) meets at least one of the following requirements:

- (i) the beneficiary of the trust is a lending person:
- (ii) the trust has its assets included in financial statements that are prepared using IFRSs.

Definition: A person is a **lending person**:

(a) whose main business activity is lending funds or leasing personal property to persons who are not associated with the person; or

(b) who is a member of a group whose main business activity is lending funds or leasing personal property to persons who are not associated with any member of the group.

Definition: A beneficiary of a securitisation trust is a **securitisation trust beneficiary.**

The definition of a securitisation trust is partially based on the existing definition of "debt funding special purpose vehicle" (DF SPV) in section YA 1, with some modifications to recognise that the DF SPV definition does not capture all relevant trusts in the securitisation industry.

A securitisation trust is required to have only one beneficiary at any point in time. This does not necessarily need to be the same company throughout the trust's existence.

Unlike the DF SPV definition, the securitisation trust definition does not require all of the trust's assets to be treated as assets of its originators, recognising that a securitisation trust may not necessarily be consolidated with the originator for financial reporting purposes.

The securitisation trust is required to either (a) have a "lending person" as its beneficiary or (b) have its assets included in financial statements that are prepared using IFRSs. This ensures that the exclusion is targeted towards the securitisation industry and not available to any trust established for the sole purpose of raising funds by borrowing money backed by its assets, for example.

Deceased estates

Section HC 8B and Clause 6B of Schedule 1, Part A of the ITA

Deceased estates are excluded from the 39% trustee tax rate and remain subject to a 33% rate in the income year the estate was created, and the following three income years.

Background

Deceased estates are taxed as trusts,[13] which means income they derive is taxed at the trustee tax rate to the extent it is not beneficiary income.

Most trusts can use existing rules to pay or allocate income as beneficiary income to mitigate over-taxation. However, deceased estates may not be able to use beneficiary income allocations to mitigate over-taxation if the beneficiaries of the deceased estate are not yet known, or potential claims against the deceased estate have not yet been resolved.

Key features

A deceased estate is excluded from the 39% trustee tax rate in the income year the estate was created and the following three income years. Instead, such deceased estates are subject to a 33% tax rate on their trustee income.

Deceased estates are subject to ordinary trust tax rules outside this time period. This means a deceased estate could satisfy the criteria to be a de minimis trust.

Effective date

The amendments apply for the 2024–25 and later income years (beginning 1 April 2024 for most trusts).

Detailed analysis

New section HC 8B of the ITA provides that during the income year the estate was created and the following three income years, a deceased estate is subject to a 33% tax rate on its trustee income instead of the 39% trustee tax rate.

If a deceased estate is not wound up by the end of the third income year following the income year the estate was created, it will be subject to the 39% trustee tax rate. However,

[13] The definition of "trustee" in section YA 1 of the ITA includes an executor or administrator.

just like trusts, deceased estates can be de minimis trusts if they earn no more than $10,000 trustee income (after deductible expenses).

These rules are not limited to deceased estates created after the enactment of the Act. Existing deceased estates are eligible provided they are still within the time limit (income year the estate was created, plus the three following income years). That is, the rules apply to deceased estates created on or after 1 April 2021.

Example 4: Trustee income of an existing deceased estate

Elmo died in August 2023, so his deceased estate was formed in the 2023–24 income year. Elmo's estate earns income from a rental property on Sesame Street, with no deductible expenses. However, the trustee of his estate cannot distribute this income for many years after his death. This is because it is unclear who the beneficiaries of his estate are due to an ongoing dispute between Bert and Ernie.

Elmo's estate was created in the income year before new section HC 8B came into effect, when the trustee tax rate was 33%. Elmo's estate is also eligible to apply the 33% tax rate for deceased estates on trustee income for the 2024–25 to 2026–27 income years, inclusive.

In the 2027–28 income year (the fourth income year after the year during which the estate was created), Elmo's estate no longer qualifies for the 33% tax rate for deceased estates. This means that trustee income earned by Elmo's estate is subject to the 39% trustee tax rate (unless the deceased estate is a de minimis trust for that income year).

The dispute over Elmo's assets is finally resolved in the 2028-29 income year. The trustee of his estate can make beneficiary income allocations to Bert and Ernie, leaving $8,000 of trustee income. Elmo's estate qualifies as a de minimis trust for this income year, so is subject to the 33% tax rate on its trustee income.

Income year	Trustee income	Does the 33% rate for deceased estates apply?	Is the trust a de minimis trust?	Tax rate for trustee income
2023–24	$15,000	No	No	33%
2024–25	$30,000	Yes	No	33%
2025–26	$30,000	Yes	No	33%
2026–27	$30,000	Yes	No	33%
2027–28	$30,000	No	No	**39%**
2028–29	$8,000	No	Yes	33%

Disabled beneficiary trusts

Section HC 39 and Clause 6B of Schedule 1, Part A of the ITA

Trusts settled for one or more disabled beneficiaries are excluded from the 39% trustee tax rate and remain subject to a 33% tax rate on trustee income, provided certain criteria are met.

Background

Prior to the amendments, "disabled beneficiary trusts" were not defined in the Inland Revenue Acts. These targeted rules were introduced to help mitigate the risk of over-taxation for trusts settled for disabled people following the introduction of a 39% trustee tax rate.

Key features

Trustee income derived by the trustees of a trust is taxed at 33% if an eligible Government support payment for a disability is paid to, or on behalf of, each of the beneficiaries of the trust.

- Support payments can be made for some, or all, of the relevant income year.
- Beneficiaries can be added or removed, as long as there is at least one disabled beneficiary remaining.
- The targeted rules do not have an income test, but three of the four eligible support payments are income-tested.
- A disabled beneficiary under 16 years of age is excluded from the minor beneficiary rule.

Effective date

The amendments apply for the 2024–25 and later income years (beginning 1 April 2024 for most trusts).

Detailed analysis

Beneficiaries must meet "disabled beneficiary" definition

The amendments allow trustee income derived by a trustee of a trust settled for a disabled person (or persons) to be taxed at a 33% rate, provided the trust has at least one "disabled beneficiary".

Definition: A beneficiary is a **disabled beneficiary** for an income year if they derive (including where the payment is made to their carer on their behalf) one or more of the following support payments for at least part of the income year (or the income year in, or before, the person turned 65 years of age):

- the Disability Allowance,
- the Child Disability Allowance,
- the Supported Living Payment on the ground of restricted work capacity, or
- the JobSeeker Support Health and Disability (if this has been paid for at least 6 months).

Table 4: Summary of eligible payments

Name	Detail	Further information
Disability Allowance	Means tested weekly payment for people who have regular, ongoing costs because of a disability (e.g., medicine or visits to the doctor).	Disability Allowance (workandincome.govt.nz)
Child Disability Allowance	Fortnightly payment made to the main carer of a child with a serious disability. It is paid in recognition of the extra care and attention needed for that child.	Child Disability Allowance (workandincome.govt.nz)
Supported Living Payment on the ground of restricted work capacity	Means tested weekly payment for people who have, or are caring for someone with, a significant health condition, injury, or disability.	Supported Living Payment (workandincome.govt.nz)
Jobseeker Support Health and Disability	Means-tested weekly payment for people who cannot work, or are working fewer hours because of a health condition, injury or disability	Jobseeker Support (workandincome.govt.nz)[14]

[14] Also see: Income support for the person being cared for – A guide for carers (msd.govt.nz), Jobseeker Support cut-out points (current) – Map (workandincome.govt.nz)

Trust must only have disabled beneficiaries

The amendments allow a disabled beneficiary trust to have multiple beneficiaries, provided they all meet the "disabled beneficiary" definition (ignoring any residual beneficiaries, who can only receive trust property if there are no longer any living disabled beneficiaries).

Support payments can be made for some, or all, of the relevant income year

To qualify, a beneficiary must have derived at least one of the four eligible Government support payments for at least part of the relevant income year (including where the payment is made to their carer on their behalf). This means trustee income derived by a trust settled for the care of a person who becomes disabled and starts receiving Government support part way through an income year can be taxed at the 33% rate for that income year.

Ability to add/remove disabled beneficiaries

Many trust deeds include a power to add or remove beneficiaries. The amendments allow disabled beneficiaries to be added or removed, as long as there is at least one disabled beneficiary remaining.

Energy consumer trusts

Schedule 1, Part A, Clause 6B(c) of the ITA

Energy consumer trusts are excluded from the 39% trustee tax rate and remain subject to a 33% tax rate on trustee income.

Background

Definition: A **lines trust** (or an energy consumer trust) is a trust that owns shares in an electricity distribution company. A lines trust is a trustee of a trust that has had (and continues to hold) shares allocated, transferred to or vested in it, being shares in:

- an energy company as defined in section 2(1) of the Energy Companies Act 1992 under an approved establishment plan under that Act:
- a company under section 76 of the Energy Companies Act 1992:
- a company that received assets and liabilities of the Crown under section 16 of the Southland Electricity Act 1993.

The beneficiaries of these trusts are the persons whose premises are connected to the energy company's distribution network. These trusts have an increased risk of over-taxation as they may face administrative issues or restrictions in their trust deeds that impact their ability to make beneficiary income allocations.

Key features

Energy consumer trusts are excluded from the 39% trustee tax rate and remain subject to a 33% tax rate on trustee income.

Effective date

The amendment applies for the 2024–25 and later income years (beginning 1 April 2024 for most trusts).

Legacy superannuation funds

Section YA 1 and Schedule 1, Part A, Clause 6(d) of the ITA

"Legacy superannuation funds" are excluded from the 39% trustee tax rate. These funds are instead taxed at a 28% tax rate on all their income, the same as widely-held superannuation funds.

Background

Definition: A **superannuation fund** is defined in the ITA as a **retirement scheme** within the meaning of section 6(1) of the Financial Markets Conduct Act 2013. This includes:

- a registered scheme that is a KiwiSaver scheme or a superannuation scheme
- a workplace savings scheme
- a "Schedule 3" (single-person) scheme

Definition: A **widely-held superannuation fund** is a superannuation fund that has 20 or more members (counting associated persons as one person).[15]

Widely-held superannuation funds are taxed at a 28% rate on all their income.[16] If a superannuation fund is a trust and is not a portfolio investment entity (a PIE) or widely-held, it is subject to ordinary trust rules including the 39% trustee tax rate.

Many widely-held superannuation funds are "restricted" schemes that are closed to new members. Over time, these funds would fall out of the widely-held superannuation fund definition due to declining membership.

Superannuation funds have an increased risk of over-taxation as all their income is trustee income.[17] They cannot make beneficiary income allocations to mitigate over-taxation.

Key features

The amendments define a "legacy superannuation fund" as a scheme that previously qualified as a widely-held superannuation fund and is a restricted workplace savings scheme.

[15] The definition of "widely-held superannuation fund" in section YA 1 of the ITA requires that the fund has 20 or more persons, as set out in HM 14(1) of the ITA.
[16] Schedule 1, Part A, Clause 6(c) of the ITA.
[17] Section HC 6(2)(a) of the ITA.

Legacy superannuation funds are subject to a 28% tax rate on all their income, the same as widely-held superannuation funds.[18]

Effective date

The amendments apply for the 2024–25 and later income years (beginning 1 April 2024 for most trusts).

Detailed analysis

The amendments introduce a new definition for a "legacy superannuation fund".

Definition: A trust is a **legacy superannuation fund** if it formerly satisfied the "widely-held superannuation fund" definition and is either:

- a restricted workplace savings scheme, as designated by the Financial Markets Conduct (Designation of Restricted Schemes) Order 2016, or
- treated as a registered scheme that is a superannuation fund by section 59A(1)(b) of the National Provident Fund Restructuring Act 1990.

For the 2024–25 and later income years, legacy superannuation funds are subject to a 28% tax rate, similar to widely-held superannuation funds. This ensures that these funds are not worse off simply due to declining membership.

Private family trusts operated as retirement savings vehicles and "Schedule 3" (single-person) schemes are not included within the legacy superannuation fund definition. This is because, generally, the settlors of these trusts retain a large degree of control over these trusts and do not need to invest on arm's length terms. Providing a lower tax rate for these types of trusts would be inconsistent with the widely-held requirements for retirement savings vehicles like PIEs.

A trust operated as a retirement savings vehicle that does not qualify for the widely-held superannuation fund or legacy superannuation fund definitions would still be eligible to be a de minimis trust (and able to apply the 33% tax rate) if trustee income for the income year does not exceed $10,000 (after deductible expenses).

[18] Schedule 1, Part A, Clause 6(c) and(d) of the ITA.

Corpus and settlements on other trusts

Section HC 4(3) of the ITA

Amounts paid as beneficiary income and then settled on a new trust on the beneficiary's behalf are included in the corpus of the new trust.

Background

A settlement by a trustee of a trust (Trust A) on another trust (Trust B) is excluded from corpus of Trust B to the extent to which, if it were distributed to a New Zealand-resident beneficiary of Trust A, it would be beneficiary income or a taxable distribution to that beneficiary.[19] This rule is intended to ensure that trustees cannot avoid paying tax on distributions of amounts accumulated in trusts simply by settling those amounts on other trusts and then distributing them as tax-free corpus.

Trustees can make resettlements on behalf of beneficiaries. This involves:

- a payment made by the trustee to the beneficiary for the purposes of the definitions of "beneficiary income"[20] and "distribution"[21], and
- a settlement by (trustees on behalf of) the beneficiary on the new trust.

Key features

The amendment clarifies the definition of corpus to ensure that a resettlement on behalf of a beneficiary is not excluded from corpus of the new trust. These settlements have not been made to avoid paying tax. The amendment ensures that such settlements are not subject to tax twice – first as beneficiary income (or a taxable distribution), then when the settlement is distributed to the beneficiary.

Effective date

The amendment applies for the 2024–25 and later income years (beginning 1 April 2024 for most trusts).

[19] Section HC 4(3) of the ITA.
[20] Section HC 6 of the ITA.
[21] Section HC 14 of the ITA.

Further information

Description	Further information
The landing page on the IRD website for general information about trusts and estates, including how to file a trust tax return.	https://www.ird.govt.nz/roles/trusts-and-estates
The Act amended the Income Tax Act 2007 to increase the trustee tax rate and make consequential changes.	Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Act 2024 Income Tax Act 2007
In February 2024, Inland Revenue published an article providing high-level guidance on how it may perceive some taxpayer transactions and structural changes in response to the 39% trustee tax rate.	GA 24/01: Proposed increase in the trustee tax rate to 39%
In February 2024, Inland Revenue published a revised Interpretation Statement that explains the taxation of trusts (and deceased estates) under the trust rules in the Income Tax Act 2007. This does not cover the changes in the *Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Act 2024*.	IS 24/01: Taxation of trusts

About this document

Special reports are published shortly after new legislation is enacted or Orders in Council are made to help affected taxpayers and their advisors understand the consequences of the changes. These are published in advance of an article in the *Tax Information Bulletin*.