Legally Speaking

Helmore Stewart Lawyers

Proposed increase in income tax rate for trusts

Trusts have long been a popular method for individuals and families to manage their wealth and assets in New Zealand.

with Brydie Dale
Helmore Stewart Lawyers

They are particularly favoured for estate planning across multiple generations for farming families in rural Canterbury.

While Trusts offer various benefits, including asset protection and estate planning advantages, it is essential to understand the reporting and tax implications associated with them.

Trusts are subject to income tax under the provisions of the Income Tax Act 2007. Trusts are considered separate entities for tax purposes, meaning they are required to file tax returns and pay income tax on any income generated.

The Labour Government has released their 2023 budget in May this year, which proposes an increase on the Income Tax Rate for Trusts from 33% to 39%. This is a significant change which is due to take effect from 1 April 2024.

The increased Income Tax Rate, along with recently implemented reporting requirements for Trusts (which came into effect 1 April 2021), are part of the Governments attempt to keep a closer eye on Trusts and deter high income earners gaining a tax advantage by allocating income to a Trust.

Where the sole asset of the Trust is the family home, as will be the case with a number of Family Trusts, it is likely the Trust will not be generating income, and will not be required to pay any income tax. If this is the case, all that is required of trustees is to file a non-active trust declaration (IR633) with IRD. In this case the proposed 39% Income Tax Rate is unlikely to have an effect on the Trust.

Many Trusts in North Canterbury are used as vehicles for operating farms, which will most likely result in the Trust having income generating assets. Trust income can include rental income, dividends, interest, capital gains, and other types of taxable income generated by the Trust.

Where the Trust generates an income of over $1,000, the trustees of the Trust will be required to file a tax return with the IRD, and from 1 April 2024, the Trust's income will be taxed at the 39% Tax Rate. Although, as 2023 is an election year, we may see a change in Government, which could result in the proposed 39% income tax rate for Trusts not being implemented, in which case the current Income Tax Rate of 33% would apply.

If trustees are unsure whether their Trust may be generating income, and which reporting requirements apply to their Trust, we recommend they take advice from a chartered accountant.

> ‘It is a good time for trustees to be thinking about whether the Trust is still fit for purpose.

In light of the recent Trust reporting requirements, and increase in the Income Tax Rate for Trusts, it is a good time for trustees to be thinking about whether the Trust is still fit for purpose.

What may have been an effective asset planning strategy when the Trust was set up, may no longer be the best option under the current legislation. If trustees have any concerns regarding the structure of their Trust, they ought to speak to their lawyer.