

# GMS Flash Alert

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## New Zealand – Budget Measures Embodied in New Tax Bill

Recently, following the Budget 2023 announcements, New Zealand's government tabled two tax bills: *The Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill* (hereinafter, the "May 2023 Tax Bill") and *The Taxation Principles Reporting Bill*.

In this *GMS Flash Alert*, we will focus on the proposed changes to the taxation of trusts in the May 2023 Tax Bill. The May 2023 Tax Bill also includes a number of minor changes which will affect both individuals and employers including the introduction of a three-percent "employer" contribution to KiwiSaver on Paid Parental Leave payments, a change in the calculation of extra pays on termination of employment, and taxation of individuals who acquired New Zealand financial arrangements while nonresident.<sup>1</sup>

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### WHY THIS MATTERS

The measures related to the taxation of trusts follow the release of Inland Revenue research aimed at high-wealth individuals which recognised the high usage of trusts and the potential associated tax benefits. The proposed change aims to level the playing field given the current misalignment of personal and entity tax rates. The higher tax rate will potentially increase taxpayers' liability and potentially add to compliance costs, administration, and give rise to other unintended consequences.

Employees on parental leave will benefit from an additional contribution to KiwiSaver. Under the terms of the measure, the government will pay the three-percent employer contribution to KiwiSaver on Paid Parental Leave payments if the recipient also were to make a matching contribution.

The tax burden currently faced by individuals who acquired New Zealand financial arrangements while nonresident will potentially be reduced.

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# May 2023 Tax Bill

## Taxation of Trusts

Budget 2023 increased the trustee tax rate from 33 percent to 39 percent, from 1 April 2024. This rate increase, along with other related amendments, is included in the May 2023 Tax Bill. There are a number of accompanying changes, including additional integrity measures to stop use of personal companies to avoid the 39-percent trust rate and exceptions for deceased estates and disability trusts, to prevent over-taxation.

Trustees of a deceased estate are allowed to pay tax on trustee income at the deceased person's marginal tax rate if the income is derived within 12 months of the person's death, to avoid over-taxation. Trustee income derived more than 12 months after death will be subject to tax at 39 percent.

Trustees of a "disabled beneficiary trust" (a trust whose sole beneficiary must be the disabled person) are allowed to be taxed at the disabled beneficiary's marginal tax rate.

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## KPMG INSIGHTS

The rate change is framed as improving fairness and increasing tax system integrity. Inland Revenue has previously raised concerns around misalignment of personal and entity tax rates, with a particular focus on trusts. The results of its recent High Wealth Individuals research are likely to have added to the pressure. The trust rate announcement closes one of these "gaps." Interestingly, the Regulatory Impact Analysis accompanying the May 2023 Tax Bill suggests that misalignment with the company and top PIE rate will be the subject of future consideration.

There is acknowledgement that increasing the trustee tax rate could result in over-taxation for some. The Bill Commentary discusses (as does the Inland Revenue fact sheet) mitigation options. The suggestion is that income can always be allocated to beneficiaries (including credited to their current account or the amount "paid" but then resettled on the trust, if there is no cash to distribute) to access the lower rates. However, this will not necessarily be straightforward, particularly once the trust law overlay (including trustees' fiduciary obligations) is applied. At a minimum, there is the potential for additional compliance costs and unintended consequences.

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## Other Key Changes

- From 1 July 2024, the government will pay the three-percent employer contribution to KiwiSaver on Paid Parental Leave payments if the recipient also makes a matching contribution. (This was a Budget 2023 announcement.)
- The tax rate applicable to extra pays (e.g., lump sum holiday pay) on termination of employment will be based on annualisation of the preceding two pay periods (rather than four weeks).
- Clarification has been provided in the May 2023 Tax Bill that for individuals who acquired New Zealand financial arrangements while nonresident, they will only be taxed under the base-price-adjustment rules on any gains (or losses) made after becoming a transitional resident. (That is any accrued gains made on these investments while they were nonresident will be excluded.) This rule change will largely affect the investor-category-visa holders where large sums of foreign currency may be placed on deposit in New Zealand prior to relocation.

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## KPMG INSIGHTS

Individual taxpayers and employers may find the new rules complex and have difficulty understanding how they will be impacted, in practical terms. They should consider consulting with their qualified tax services professional or a member of the People, Employment, and Mobility team with KPMG in New Zealand.

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## FOOTNOTE:

1 For the complete story, see " International Tax and 39% Trust Tax Rate Bill and Tax Principles Reporting Bill introduced: In Addition to the Budget, the Government Has Tabled Two Tax Bills." at : <https://kpmg.com/nz/en/home/insights/2023/05/international-tax-and-39--trust-tax-rate-bill-and-tax-principles.html> .

For *The Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill* (the "May 2023 Tax Bill"), see: <https://www.taxpolicy.ird.govt.nz/news/2023/2023-05-18-multinational-tax-bill> .

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## Contact us

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