

NEW LEGISLATION > NEW ACT

Taxation (Income Tax Rate and Other Amendments) Act 2020

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The Taxation (Income Tax Rate and Other Amendments) Act 2020 (the Act) introduces a new top personal income tax rate of 39% on annual income exceeding \$180,000 for the 2021–22 and later income years and amends other tax rules to ensure that the new top personal tax rate applies consistently across the personal tax system.

Full coverage of the Act will be published in the next available edition of the *Tax Information Bulletin*.

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Overview

The Taxation (Income Tax Rate and Other Amendments) Bill was introduced into Parliament on 2 December 2020. It passed through all stages under urgency and was enacted as the Taxation (Income Tax Rate and Other Amendments) Act 2020 on 7 December 2020.

The new legislation:

- introduces a new top personal income tax rate of 39% on annual income exceeding \$180,000 for the 2021–22 and later income years
- amends other tax rules to ensure that the new top personal tax rate applies consistently across the personal tax system
- clarifies the information-gathering powers of the Commissioner
- introduces increased disclosure requirements for trusts, and
- increases the Minimum Family Tax Credit threshold for the 2020–21 tax year.

Introducing a new top personal income tax rate

Sections RD 10, RD 17, RD 50, RD 52, RD 53, RD 58–61, RD 67, RL 4, schedules 1, 2 and 6 of the Income Tax Act 2007; sections 28C, 48B and schedules 4 and 5 of the Tax Administration Act 1994

The Taxation (Income Tax Rate and Other Amendments) Act 2020 (the Act) amends sections of the Income Tax Act 2007 (the ITA) and the Tax Administration Act 1994 (the TAA) to introduce a new top personal income tax rate of 39% on annual income exceeding \$180,000 for the 2021–22 and later income years. The Act also amends other tax rules to ensure that the new top personal tax rate applies consistently across the personal tax system.

Background

New Zealand's personal income tax rates are progressive. The greater a person's taxable income, the higher the proportion that is taxed.

Prior to the start of the 2021–22 income year, personal income tax rates were as follows:

Taxable income	Tax rate
\$0 – \$14,000	10.5%
\$14,001 – \$48,000	17.5%
\$48,001 – \$70,000	30%
\$70,001 upwards	33%

The tax rates that apply to personal income differ from the flat tax rates that apply to entities, such as companies. A flat rate means the rate does not increase as income increases. Portfolio investment entities (PIEs), which includes KiwiSaver funds, are subject to a progressive tax scale, but at rates different to those that apply to personal income.

Key features

The Act introduces a new top personal income tax rate of 39% for the 2021–22 and later income years. The new rate applies to annual income in excess of \$180,000.

The Act also amends other basic tax rules to ensure the new rate is applied consistently on all types of personal income. These consequential changes generally apply from 1 April 2021, with the exception of the new RWT rate on interest, which applies from 1 October 2021.

Application date

The new top personal tax rate of 39% applies for the 2021–22 and later income years. For most taxpayers the 2021–22 income year starts on 1 April 2021.

Consequential changes to tax rules largely apply from 1 April 2021. The changes to the PAYE rules, fringe benefit tax (FBT), employer superannuation contributions tax (ESCT), resident land withholding tax (RLWT), retirement savings contributions tax (RSCT) and the Māori authority distributions non-declaration rate apply from 1 April 2021. An exception is the new resident withholding tax (RWT) rate on interest, which applies from 1 October 2021.

Detailed analysis

Table 1 in Part A of schedule 1 of the Income Tax Act 2007 sets out the basic income tax rates that apply to personal income. The Act introduces a new row to accommodate the 39% rate:

Taxable income	Tax rate
\$0 – \$14,000	10.5%
\$14,001 – \$48,000	17.5%
\$48,001 – \$70,000	30%
\$70,001 – \$180,000	33%
\$180,001 upwards	39%

Secondary tax codes (schedule 2, Part A, clause 6B; schedule 5, Part A, clause 1 and tax code table row 6B of the ITA)

This Act amends the PAYE rules by introducing a new tax code (SA) for secondary-income earners whose total PAYE income payments (total income subject to PAYE) are greater than \$180,000. The existing secondary tax code ST still applies for secondary employment earnings for an employee whose total income subject to PAYE is more than \$70,000, but

from 1 April 2021 is limited to income less than \$180,000. Where an employee's total income subject to PAYE is greater than \$180,000 the new SA code applies from 1 April 2021.

Tax deduction code	Withholding tax rate	Who should use this code
ST	0.330	For secondary employment earnings for an employee whose total PAYE income payments are more than \$70,000 but not more than \$180,000.
SA	0.390	For secondary employment earnings for an employee whose total PAYE income payments are more than \$180,000.

Extra pay (sections RD 10, RD 17, and schedule 2, Part B, table 1 of the ITA)

Lump sums earned in the course of employment ("extra pays") such as bonuses, back pay, redundancy and retirement payments are generally taxed at the employee's marginal rate. The Act introduced a new 39% tax rate on extra pays if a person's taxable income is expected to exceed \$180,000.

Fringe benefit tax (sections RD 50, 52, 53, 58–61, and schedule 1, Part C, table 1 of the ITA)

Fringe benefit tax (FBT) is paid by employers on non-monetary benefits provided to employees, such as the use of motor vehicles. The rates and thresholds are calculated using the after-tax value of a benefit paid to an employee and takes into account the PAYE which would otherwise been paid had an employee received an equivalent amount as salary or wages instead of the fringe benefit. It is for this reason FBT rates and thresholds differ from the basic personal income tax rates and thresholds.

The FBT rate is calculated using the formula:

$$\frac{\text{tax rate}}{1 - \text{tax rate}}$$

To account for the introduction of the new top personal tax rate of 39%, the Act amends table 1, Part C of schedule 1 to the ITA to introduce a new top FBT rate of 63.93% applying to all-inclusive pay exceeding \$129,680.

Row	Range of dollar in all-inclusive pay	New rate
1	\$0 – \$12,530	0.1173
2	\$12,531 – \$40,580	0.2121
3	\$40,581 – \$55,980	0.4286
4	\$55,981 – \$129,680	0.4925
5	\$129,681 upwards	0.6393

Certain parts of the FBT rules in the Income Tax Act 2007 referred to the previous top FBT rate (49.25%) as well as the previous second highest FBT rate (42.86% or 43%). These references have been updated to 63.93% and 49.25% respectively.

The FBT changes apply to fringe benefits provided or granted on, or after, 1 April 2021, for the 2021–22 and later income years.

Resident withholding tax rates on interest income for individuals (schedule 1, Part D tables 2 and 3 of the ITA)

The Act introduced a new RWT rate for individuals who receive interest income. This mirrors the new top personal rate of 39%. Individuals are able to elect this new rate on interest earned from 1 October 2021. The new RWT rate on interest has a later application date than other amendments in the Act to allow interest payers to implement the required systems changes. The non-declaration rate remains at 45%. This applies if an individual does not give their IRD number to the interest payer.

Employer’s superannuation contribution tax (section RD 67 and schedule 1, Part D, table 1 of the ITA)

ESCT applies to superannuation contributions made by a person’s employer. The rates are set at the same rate as basic income tax rates, but only one single ESCT rate applies to the amount of the contribution. The thresholds for determining which ESCT rate applies are based on the income tax rate thresholds but are grossed up to minimise the risk that employers’ superannuation contributions are taxed at a higher rate than the rest of an employee’s salary and wages. In most cases, this ESCT rate threshold amount is the amount of salary and wages earned by the employee and their gross employer’s contributions made in the preceding tax year. This then determines which ESCT rate applies to superannuation

contributions made by a person's employer in the current year. The Act introduces a new ESCT rate of 39% on superannuation contributions made for an employee whose ESCT rate threshold amount exceeds \$216,000. The rate of ESCT that applies to the employer's superannuation contribution is 39% if the contribution is made for the benefit of one or more past employees or if the employer chooses the rate of 39% and the contribution is made to a defined benefit fund.

Residential land withholding tax (section RL 4 of the ITA)

RLWT applies to sales of residential property by offshore persons made within five years of acquisition. From 1 April 2021, the RLWT rate is 39%, except for where the vendor is a company. If the vendor is a company, the RLWT rate remains at the company rate of 28%.

Retirement scheme contribution tax (schedule 1, Part D; schedule 6 table 2 of the ITA, section 28C of the TAA)

A new RSCT rate of 39% applies where the other rates notified under section 28C of the Tax Administration Act 1994 do not apply.

Taxable Māori authority distributions non-declaration rate (schedule 1, Part D, table 4 of the ITA)

Under the Act, the payment of a taxable Māori authority distribution that is more than \$200 where the Māori authority does not have a record of the member's IRD number is subject to a non-declaration tax rate of 39%. The previous non-declaration rate for payments up to 1 April 2021 was the previous top rate of 33%. The standard rate for a taxable Māori authority distribution is 17.5%, which has not changed.

Clarifying the information-gathering powers of the Commissioner

Section 17GB of the Tax Administration Act 1994

New section 17GB of the Tax Administration Act 1994 clarifies that the Commissioner of Inland Revenue's information-gathering powers include being able to require persons to provide information solely for the purpose of tax policy development.

Background

Existing section 17B of the Tax Administration Act 1994 provides the Commissioner with the ability to request information where the information is required under the Inland Revenue Acts or the information is required for any other function lawfully conferred on the Commissioner. There has been uncertainty as to whether this allows the Commissioner to require persons to provide information solely for tax policy development purposes.

Key features

New section 17GB has been inserted into the Tax Administration Act 1994, to clarify that the Commissioner's information-gathering powers extend to requiring information for the purpose of tax policy development. Having access to information is critical to providing good tax policy advice. New section 17GB provides that the Commissioner may require information to be provided for the development of policy for the improvement or reform of the tax system. The term "tax system" is intended to include social policy products administered by the Commissioner.

There is a limitation on how information collected under new section 17GB can be used. Section 17GB(2) provides that information collected under this new provision cannot be used in proceedings as evidence against the person providing the information. However, 17GB(3) ensures this limitation does not apply if the information is collected under another section of the Tax Administration Act 1994, for example, existing section 17B. This recognises that the purpose of gathering information under section 17GB is to support the development of tax policy rather than enforcement activities; there are already well-established powers available to the Commissioner to require and use information for compliance and enforcement purposes.

The restriction again using the information as evidence against the person in proceedings includes criminal proceedings.

Application date

This provision applies from 7 December 2020, the date of enactment of the Taxation (Income Tax Rate and Other Amendments) Act 2020.

Increased information required in trustees' annual returns

Sections 59BA and 59BAB of the Tax Administration Act 1994 and section YA 1 of the Income Tax Act 2007

New section 59BA of the Tax Administration Act 1994 requires the collection of more information on settlements, financial positions and distributions in relation to trusts. This remedies a current deficit in information collected and held by the Commissioner. This additional information is required from the 2021–22 income year onwards. New section 59BAB allows the Commissioner to require this information from certain trustees in relation to the prior seven years.

This supports the Commissioner's ability to assess compliance with the new 39% personal income tax rate. It also assists the Commissioner in understanding and monitoring the use of structures and entities by trustees.

Background

Before the enactment of the Taxation (Income Tax Rate and Other Amendments) Act 2020, trustees were already required to provide a return for income derived in an income year.

As part of the return, trustees are required to include information on allocations to beneficiaries and identifying information for the beneficiaries.

Some types of trusts, such as trading trusts, already return financial statement summary information. The amendments expand this current obligation in order to provide Inland Revenue with more information on the use and financial position of trusts, and to remedy the current information deficit.

Existing provisions to exempt non-active trusts from the requirement to file remain unchanged.

Key features

New section 59BA of the Tax Administration Act 1994 introduces a requirement to collect information from trustees about the financial position of trusts as part of a trustee's tax return. This includes financial information for the trust and information on settlements and distributions relating to the trust.

The requirement applies to trustees of all trusts which have assessable income and required to file a return under former section 59(3) of the Tax Administration Act 1994. New section 59BA replaces section 59(3).

This increased disclosure requirements do not apply to the following types of trusts:

- non-active trusts that are not required to file pursuant to section 43B of the Tax Administration Act 1994
- charitable trusts incorporated under the Charitable Trusts Act 1957
- trusts eligible to be a Māori authority
- resident trustees of foreign trusts.

New section 59BAB provides the ability for the Commissioner to request information for certain prior years.

Application date

The amendments apply for trustees' annual returns for the 2021–22 and later income years.

Detailed analysis

Information required to be provided

New section 59BA requires financial accounting information to be provided by trustees on an ongoing basis. This includes:

- profit and loss statements
- balance sheet items, and
- other information to be specified by the Commissioner (for example, any transfers to the trust by associated persons).

The Commissioner will prescribe additional information relevant to trusts which must be provided as part of the return information, such as loans to or by related parties.

Trustees will also be required to provide information on settlements and distributions and made during the income year and include that in their returns.

Settlements

The information required for settlements over the year includes identifying information for settlors such as name, IRD number and date of birth, as well as the amount and nature of each settlement. In addition, it is intended that for the 2021–22 return year, trustees provide names and details of settlors from prior years. This is achieved in new section 59BA(2)(c) by requiring details for those settlors whose details have not previously been supplied to the Commissioner.

Inland Revenue does not currently collect information on subsequent settlements on a trust. This is an information gap which means that Inland Revenue is not capturing information on all settlors. This is a key piece of information, as New Zealand has a settlor-based trust taxation regime.

Example 1

Socks and Boots Trust was settled by Lane Boots and Kane Socks in 2000 for the purpose of running a clothing shop. In January 2022, Jane Socks transfers a car to the trust for use in the business.

For the 2021–22 income year, the trustee of Socks and Boots Trust must provide the details of Jane Socks as a settlor in the current income year, and also the details of Lane Boots and Kane Socks as settlors whose details have not previously been provided to the Commissioner.

The trustee must also provide details on the amount and nature of the settlement Jane Socks made in the 2021–22 year.

Example 2

No further settlements are made on the trust in the 2022–23 income year. The trustee does not have to provide any settlement or settlor details as part of their return for this year.

Distributions

For distributions, the information required includes identifying information for beneficiaries such as their name, IRD number and date of birth. This is set out in new section 59BA(2)(d).

The information required for distributions is similar to the information Inland Revenue collects about beneficiaries as part of the current tax return process, where there is an allocation of income to the beneficiary.

The Commissioner may require other information relating to distributions to be reported, which could include, for example, the source of the distribution.

Other relevant persons

New section 59BA(2)(e) requires trustees to provide information on those with the power under the trust to appoint or dismiss a trustee, to add or remove a beneficiary, or to amend the trust deed.

Requiring this information is necessary as “appointers” or those with power to amend the trust deed would not be disclosed otherwise. The reference to the power arising “under the trust” is intended to ensure this does not capture beneficiaries where they have one of the above powers only if all beneficiaries agree.

This forms part of a trustee’s annual return requirements and therefore if the information is not provided or false information is provided, existing penalty provisions apply as appropriate. There are no additional or specific penalties.

Power for the Commissioner to request the information for prior years

New section 59BAB allows the Commissioner to collect information referred to in section 59BA for prior years, where such information exists. This is necessary because even if more information is provided going forward, there would still be an information deficit relating to years prior to the 2021–22 income year.

This provision is necessary to assist with assessing compliance with the new top personal income tax rate of 39%. Information for income years prior to 2021–22 is expected to assist in understanding and monitoring the changes in the use of structures and entities by trustees in response to the new 39% rate.

Rather than requiring prior year information for all trusts, the Commissioner is able to determine for which trusts the information is likely to be the most useful in order to minimise compliance and administration costs. The Commissioner must notify a trustee if they are required to provide prior year information.

This provision is limited to the prior seven years to align with record keeping rules. However, it is recognised that record keeping rules may not necessarily have applied for the requested information. New section 59BAB(1)(c) makes it clear that trustees are only required to provide the requested information if it is within the knowledge, possession or control.

While this does not form part of a return, it is information required to be provided to the Commissioner under tax law.

Who the new rules apply to

Trustees currently filing

The disclosure rules are intended to be additional annual return requirements for those trustees who currently file returns with Inland Revenue. Trusts not deriving assessable income are not required to file additional return requirements

Trusts treated as companies for tax purposes

Where trusts are treated as companies for tax purposes, for example, unit trusts, they are not required to comply with trust filing requirements as they instead file as a company. Accordingly, the increased disclosure requirements do not apply to these trusts.

Excluded trusts

The new provisions do not apply to certain types of trusts:

- Non-active trusts are excluded as they are not required to file a trust return pursuant to section 43B.
- Charitable trusts incorporated under the Charitable Trusts Act 1957 are also not required to file a return of income. In addition, many of these trusts are registered with the Charities Services which has its own set of reporting requirements.
- Trusts eligible to be a Māori authority under section HF 2 of the Income Tax Act 2007, this includes Māori land trusts constituted under the Te Ture Whenua Māori Act 1993.
- Resident trustees of foreign trusts, as they already provide information to Inland Revenue as part of the foreign trust disclosure rules.

Example 3

Coats and Hats Trust was set up by Jo Coats and Matt Hats in 2019, and they transferred their family home into the trust that year. The trust does not hold any other property, and Jo and Matt reside in the home.

The trustee of Coats and Hats Trust filed a declaration to the Commissioner that Coats and Hats Trust is a non-active trust. The additional disclosure requirements do not apply to this trust while it is classified as a non-active trust.

Obligation to provide the information

Trustees have filing obligations under the Tax Administration Act 1994. This includes a trust with a New Zealand resident settlor and a non-resident trustee. Section 59BA(4) places an additional obligation regarding compliance with the new annual returns in section 59BA on

New Zealand resident settlors to ensure the performance of the obligations imposed on non-resident trustees under the new annual return section. This reflects the greater enforcement difficulty in relation to non-resident taxpayers compared with residents.

New 59BAB(3) repeats the obligation for requests for information for prior income years.

These are additional obligations imposed on the NZ-resident settlor but do not supplant the obligations that a non-resident trustee has in relation to filing.

Minimum family tax credit for 2020–21

Section ME 1 of the Income Tax Act 2007

Background

The minimum family tax credit (MFTC) is a payment to low-income working families. The purpose of the MFTC is to ensure that the incomes of families who work full time (defined as 20 hours for sole parents and 30 hours for couples) and do not receive a benefit are always higher than what their income would be if they continued to receive a benefit.

The MFTC threshold is set above the maximum income a two-parent family could receive on a benefit. It is therefore sensitive to changes that impact how much income a family can receive on a benefit, such as benefit rates, benefit abatement thresholds and the minimum wage. The MFTC threshold has been adjusted each year since 2006 to reflect changes to these settings.

Key features

The amendment to section ME 1 of the Income Tax Act 2007 increases the MFTC threshold for the 2020–21 tax year to \$29,432 per annum (\$566 per week) from \$27,768 per annum (\$534 per week). The new threshold applies from the start of the 2020–21 tax year (1 April 2020) and will apply for later tax years, unless a further adjustment to the MFTC threshold is made.

In response to COVID-19, main benefits were increased by \$25 per week from 1 April 2020. The MFTC has been adjusted retrospectively to reflect the \$25 increase to main benefits.

The increase to the 2020–21 MFTC threshold provides an additional \$32 to families in each week that they receive the MFTC in the 2020–21 tax year.

References

Legislative References

Income Tax Act 2007: *sections ME 1, RD 10, RD 17, RD 50, RD 52, RD 53, RD 58–61, RD 67, RL 4, YA 1, schedules 1, 2 and 6*

Tax Administration Act 1994: *sections 17GB, 28C, 48B, 59BA, 59BAB, and schedules 4 and 5*

About this document

New legislation articles provide an explanation of the changes made in recently enacted tax-related legislation including acts, general and remedial amendments, and Orders in Council.