

Taxation (Research and Development Tax Credits) Bill

Government Bill

Explanatory note

General policy statement

This Bill introduces amendments to the Income Tax Act 2007 and the Tax Administration Act 1994.

The Bill proposes to introduce a research and development tax credit to incentivise businesses to perform research and development.

The Government's goal is to increase the amount of research and development undertaken in New Zealand. By providing a tax credit, the Government will lower the cost to businesses of performing research and development. This will create an incentive for firms already performing research and development to do more, and for other firms to start undertaking research and development.

The Bill sets out the conditions which need to be satisfied for a firm to receive a tax credit. It also clarifies the circumstances and types of activities that will not be eligible for the tax credit.

The corollary of providing an incentive for research and development is ensuring that firms that are not performing research and development do not receive the tax credit. The Bill therefore establishes boundaries around categories of expenditure so that routine business-as-usual expenditure does not qualify for the tax credit.

The main policy measures have been developed in accordance with the Generic Tax Policy Process (*GTPP*). This is a very open and interactive process between the public and private sectors, which helps ensure that tax and social policy changes are well thought through. This process is designed to ensure better, more effective policy development through early consideration of all aspects, and likely impacts, of proposals, and increased opportunities for public consultation.

The *GTPP* means that major tax initiatives are subject to public scrutiny at all stages of their development. In the context of the R&D tax credit, this has allowed Inland Revenue, the Ministry of Business, Innovation, and Employment, and Treasury offi-

cial to develop more practical options for reform by drawing on information provided by the private sector and the people who will be affected.

The final stage is a post-implementation review of new legislation, and identification of remedial issues that need correcting for the new legislation to have its intended effect. Further information on the GTPP can be found at: <http://taxpolicy.ird.govt.nz/how-we-develop-tax-policy>.

The following is a brief summary of the policy measures and features contained in this Bill. A comprehensive explanation of all the policy items is included in a commentary on the Bill that is available at: <http://taxpolicy.ird.govt.nz/publications/2018-commentary-rdtc-bill/overview>.

Defining an eligible person

The Bill proposes requirements for who is eligible for a research and development tax credit. The key requirements are that a person—

- performs a core research and development activity in New Zealand, or a contractor performs it on their behalf; and
- carries on a business through a fixed establishment in New Zealand; and
- has day-to-day management control over the research and development activities.

It is also proposed that the person must also satisfy one of the following to be eligible:

- the person owns the results of the R&D activities; or
- the person is able to use the results of the R&D activities for no further consideration; or
- a company in the person's corporate group owns the activities, and the company is resident in a jurisdiction with which New Zealand has a double tax agreement.

Defining research and development

A core research and development activity is proposed to be an activity that—

- is conducted using a systematic approach; and
- has the purpose of creating something new; and
- has the purpose of resolving scientific or technological uncertainty.

Activities that are not a core activity will only be eligible if they are in support of a core activity. Some activities have been explicitly excluded from being a core or supporting activity.

Calculating the tax credit

The tax credit is proposed to operate with a threshold and a cap. In general, to be eligible for a tax credit, the Bill stipulates that a person must spend at least \$50,000 on research and development in a given year. The maximum amount of expenditure that

is eligible for a tax credit is \$120 million, unless a person has obtained the Commissioner's approval to exceed the cap.

The tax credit that a person receives is equal to 15% of their eligible expenditure. Eligible expenditure is expenditure incurred on an R&D activity, and includes things like employee salaries, consumables used in the R&D process and depreciation of assets used in the R&D.

Where expenditure is incurred on an R&D activity performed in the course of commercial production, the amount that may be claimed is limited to the additional expenditure incurred because of that R&D activity.

Primarily, the tax credit is only available for expenditure on research and development that occurs in New Zealand. Nevertheless, up to 10% of an R&D claim can be for expenditure incurred on a research and development activity that occurs outside New Zealand.

Orders in Council

The Bill contains schedules of activities that are ineligible for the tax credit, and categories of expenditure that are eligible or ineligible for the tax credit.

In order to ensure that these schedules remain current as the type of research and development changes and to close off problem areas that could impact on the fiscal sustainability of the research and development tax credit, the Bill allows the Governor-General, by Order in Council made on the joint recommendation of the Minister of Revenue and the Minister of Research, Science, and Innovation, to amend the schedules.

Evaluation

The Bill requires the Minister of Research, Science, and Innovation to commission a review of the tax credit every 5 years to evaluate the regime in terms of the delivery of the policy intent, the compliance costs, and the administration of the regime.

Communication by Inland Revenue to other Government departments and agencies

The Bill allows for Inland Revenue to communicate information to relevant people within specific state sector agencies so that they can evaluate, administer, report on, and develop policy for the tax credit.

In-year approval

Starting from 1 April 2020, persons wanting to receive a tax credit will be required to seek approval that their activities meet the eligibility criteria in the year they are undertaking or contracting for those research and development activities. If granted, this approval will be binding on the Commissioner.

A person who expects to spend more than \$2 million on research and development, or is part of a group of companies that expects to spend more than \$2 million on research and development in a given year, can opt out of the general approval process.

A person who opts out of the general approval process must notify the Commissioner of their intention to opt out, and is required to submit an R&D certificate alongside their R&D supplementary return. An R&D certificate contains confirmation from an R&D certifier on a number of issues, including that a sample of the person's eligible expenditure calculation was reviewed by the R&D certifier and the sample was calculated consistently with the rules in proposed *subpart LY* (Research and development tax credits).

Refunding tax credits

When a person's tax credits are more than their income tax liability, the tax credits are refunded up to a maximum of \$255,000, provided the person meets certain criteria, or are carried forward.

Departmental disclosure statement

Inland Revenue and the Ministry of Business, Innovation, and Employment are required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=108>

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment and Inland Revenue produced a regulatory impact assessment on 29 August 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <http://taxpolicy.ird.govt.nz/publications/type/ris>
- <https://www.mbie.govt.nz/info-services/science-innovation/funding-info-opportunities/rd-tax-incentive/pdf-and-document-library/rd-tax-incentive-regulatory-impact-assessment.pdf>
- <https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments>

Clause by clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the dates on which the Parts come into force.

Part 1

Research and development tax credits: year 1

Amendments to Income Tax Act 2007

Clause 3 gives the date for which the Part applies.

Clause 4 sets out the clauses that affect the Income Tax Act 2007 for the first year of the research and development tax credit.

Clause 5 amends flowchart B4, as a consequence of the ordering rules for use of research and development tax credits.

Clause 6 amends section EE 6, to ensure that exempt people have depreciable property for the purposes of the research and development tax credit.

Clause 7 inserts a *new heading and section GB 56*, as an anti-avoidance measure, to prevent abuse of the research and development tax credit.

Clause 8 amends section LA 4, to insert an ordering rule for the use of research and development tax credits against income tax liability.

Clause 9 amends section LA 5, to provide for the use of remaining research and development tax credits. If the relevant criteria are met, up to \$255,000 of the remaining tax credits may be refunded, or otherwise carried forward if not able to be refunded.

Clause 10 inserts a *new subpart LY*, to provide a research and development tax credit. *New section LY 1* provides for some preliminary matters as well as the substantive entitlement to the tax credit itself. *New section LY 2* provides some key terms for the entitlement to the tax credit, namely the definitions of *core research and development activity*, *research and development activity*, and *supporting research and development activity*. *New section LY 3* provides the basic criteria for a person's entitlement to a research and development tax credit. *New section LY 4* provides the calculation of the tax credit at the rate of 15 cents for every dollar of total eligible research and development expenditure over the threshold provided, up to the maximum provided. *New section LY 5* defines *eligible research and development expenditure*. *New sections LY 6 and LY 7* define, respectively, *contracted research and development expenditure* and *foreign research and development expenditure* for the purposes of *section LY 5*. *New section LY 8* provides a rule for the carry forward of unused, unrefunded tax credits. *New section LY 9* provides for Orders in Council to vary *new schedules 21 and 21B*, namely schedules of eligible and ineligible expenditure and of ineligible activities. *New section LY 10* provides for a 5-yearly independent evaluation of the effectiveness of the research and development tax credit regime.

Clauses 11 to 20 amend the memorandum account regimes, to ensure that imputation credit accounts and Maori authority credit accounts correctly reflect research and development tax credit entitlements.

Clause 21 amends section YA 1. *Subclause (2)* inserts a new definition of *approved research and development cap*, to allow a variable maximum entitlement for the

research and development tax credit if the procedure in the Tax Administration Act 1994 is followed. *Subclause (3)* inserts a new definition of *approved research provider*, to allow a variable threshold in relation to certain persons and activities if the procedure in the Tax Administration Act 1994 is followed. *Subclauses (4) and (5)* amend, respectively, the definitions of *continuity period* and *continuity provisions*, consequential to the carry forward rule for unused and unrefunded tax credits. *Subclause (6)* inserts a new definition of *core research and development activity*, consequential to the definition of *core research and development activity* in *section LY 2*. *Subclause (7)* inserts a new definition of *eligible research and development expenditure*, consequential to the definition of *eligible research and development expenditure* in *section LY 5*. *Subclause (8)* amends the definition of *goods*, to allow the use of GST concepts in the research and development tax credit regime. *Subclause (9)* inserts a new definition of *ineligible technology expenditure* to ensure that inappropriate expenditure on technology is not counted, under *schedule 21B, part B*. *Subclause (10)* inserts a new definition of *internal software development expenditure* to ensure that inappropriate expenditure on internal software development is not counted, under *schedule 21B, part B*. *Subclauses (11) and (12)* amend, respectively, the definitions of *minimum market value interest* and *minimum voting interest*, consequential to the carry forward rule for unused and unrefunded tax credits. *Subclause (13)* inserts a new definition of *non-business researcher* to provide that some entities without businesses may nevertheless be entitled to the tax credit, and to also exclude some entities from being research and development contractors. *Subclause (14)* inserts a new definition of *research and development activity*, consequential to the definition of *research and development activity* in *section LY 2*. *Subclause (15)* inserts a new definition of *research and development contractor* to ensure that research and development activities carried out on behalf of a person may still qualify for the research and development tax credit. *Subclause (16)* inserts a new definition of *research and development tax credit*. *Subclause (17)* amends the definition of *residual income tax*, consequential to the use of research and development tax credits to pay tax. *Subclause (18)* amends the definition of *services*, to allow the use of GST concepts in the research and development tax credit regime. *Subclause (19)* inserts a new definition of *supporting research and development activity*, consequential to the definition of *supporting research and development activity* in *section LY 2*.

Clause 22 inserts *new schedules 21 and 21B*, namely schedules of eligible and ineligible expenditure and of ineligible activities, as criteria for a person's entitlement to research and development tax credits.

Amendments to Tax Administration Act 1994

Clause 23 sets out the clauses that affect the Tax Administration Act 1994 for the first year of the tax credit.

Clause 24 amends *section 3(1)*. *Subclause (2)* inserts a new definition of *approved research and development cap*, to allow a variable maximum entitlement for the research and development tax credit. *Subclause (3)* inserts a new definition of *approved research provider*, to allow a variable threshold in relation to certain per-

sons and activities. *Subclause (4)* amends the definition of *proscribed question*, to prevent the Commissioner from making binding rulings on questions related to the tax credit.

Clause 25 inserts *new heading and section 15ZB*, to provide the substantive rules for approved research providers, for the purpose of allowing a variable threshold in relation to certain persons and activities for the research and development tax credit.

Clause 26 amends section 22, to provide appropriate record keeping requirements for the research and development tax credit regime.

Clause 27 inserts *new section 33E*, to provide a special supplementary research and development tax credit return.

Clause 28 inserts *new section 36BE*, to provide an electronic format for the supplementary research and development tax credit return, and to provide flexibility in specifying software in relation to the return.

Clause 29 amends section 36C, as a consequential cross-reference matter.

Clause 30 inserts *new heading and sections 68CD and 68CE*, to provide a process for approving a maximum cap for a person's eligible research and development expenditure, and to provide the publication of limited details of all people who receive a research and development tax credit.

Clause 31 amends section 81, to allow information flows that appropriately support the administration of the research and development tax credit, and related incentives and advice.

Clause 32 amends section 89DA, to prevent disputes where a taxpayer has failed to file a research and development supplementary return.

Clause 33 amends section 108, to shorten the time-bar for the tax credits, and therefore shorten the period in which back years may be opened up for re-assessment.

Clause 34 repeals section 113D, as a consequential matter.

Clause 35 inserts *new section 113E*, to provide a single opportunity to open back years for reassessment for research and development tax credits.

Clause 36 amends section 138E, as a consequential cross-reference matter.

Clause 37 amends section 141EC, to strengthen the promoter penalties regime appropriately for the research and development tax credit regime.

Part 2

Research and development tax credits: year 2 and subsequent years

Clause 38 gives the date for which the Part applies.

Amendment to Income Tax Act 2007

Clause 39 amends *section LY 3 of the Income Tax Act 2007*, to introduce, in the second year, pre-approval of people and their research and development activities.

Amendments to Tax Administration Act 1994

Clause 40 sets out the clauses that affect the Tax Administration Act 1994 for the second year and subsequent years of the tax credit.

Clause 41 amends section 3(1). *Subclause (2)* inserts a new definition of *research and development certificate*, as part of verifying a person's research and development activities.

Clause 42 inserts *new section 15ZC*, to provide a certification process for some people to verify their research and development tax credits. People with greater than \$2 million annually eligible research and development expenditure will be required to use certificates, if they choose.

Clause 43 inserts *new sections 68CB and 68CC*, to provide 2 approval processes for the second year and subsequent years of the research and development tax credit. Broadly, the 2 processes are differentiated by how much annual eligible expenditure a person has. People with less than \$2 million annually eligible research and development expenditure have to use *section 68CB*, and people over \$2 million may use *section 68CC*.

Clause 44 amends section 138E, to ensure that certification and approval (under *new sections 15ZC, 68CB and 68CC*) are not amenable to the disputes process, as matters left to the discretion of the Commissioner.

Hon Dr Megan Woods

Taxation (Research and Development Tax Credits) Bill

Government Bill

Contents

		Page
1	Title	3
2	Commencement	4
Part 1		
Research and development tax credits: year 1		
3	Application	4
<i>Amendments to Income Tax Act 2007</i>		
4	Income Tax Act 2007 amended	4
5	Flowchart B4 amended (Satisfying income tax liability)	4
6	Section EE 6 amended (What is depreciable property?)	4
7	New heading and section GB 56 inserted	4
<i>Arrangements involving research and development tax credits</i>		
	GB 56 Arrangements involving research and development tax credits	4
8	Section LA 4 amended (When total tax credit more than income tax liability)	5
9	Section LA 5 amended (Treatment of remaining credits)	5
10	New subpart LY inserted (Research and development tax credits)	6
Subpart LY—Research and development tax credits		
	LY 1 Research and development tax credits	6
	LY 2 Key terms	7
	LY 3 When this subpart applies	8
	LY 4 Calculation of tax credit	9
	LY 5 Eligible research and development expenditure	10

Taxation (Research and Development Tax Credits) Bill

	LY 6	Contracted research and development expenditure	11
	LY 7	Foreign research and development expenditure	11
	LY 8	Carry forward for remaining research and development tax credits	13
	LY 9	Orders in Council	14
	LY 10	Evaluation	14
11		Section OB 4 amended (ICA payment of tax)	14
12		New section OB 9C inserted (ICA credit for research and development tax credit)	14
	OB 9C	ICA credit for research and development tax credit	15
13		Table O1 amended (Imputation credits)	15
14		Section OK 2 amended (MACA payment of tax)	15
15		New section OK 6C inserted (MACA research and development tax credit)	15
	OK 6C	MACA research and development tax credit	15
16		Table O17 amended (Maori authority credits)	16
17		Section OP 5 amended (When credits and debits arise only in consolidated imputation group accounts)	16
18		Section OP 7 amended (Consolidated ICA payment of tax)	16
19		New section OP 11C inserted (Consolidated ICA credit for research and development tax credit)	16
	OP 11C	Consolidated ICA credit for research and development tax credit	16
20		Table O19 amended (Imputation credits of consolidated imputation groups)	17
21		Section YA 1 amended (Definitions)	17
22		New schedules 21 and 21B inserted	19
		<i>Amendments to Tax Administration Act 1994</i>	
23		Tax Administration Act 1994 amended	19
24		Section 3 amended (Interpretation)	19
25		New heading and section 15ZB inserted	20
		Research and development	
	15ZB	Approved research providers	20
26		Section 22 amended (Keeping of business and other records)	21
27		New section 33E inserted (Research and development tax credits: supplementary return)	21
	33E	Research and development tax credits: supplementary return	21
28		New section 36BE inserted (Research and development tax credits: electronic formats)	21
	36BE	Research and development tax credits: electronic formats	21
29		Section 36C amended (Particulars furnished in electronic format)	21
30		New heading and sections 68CD and 68CE inserted	21

<i>Research and development</i>			
	68CD	Research and development tax credits: approved research and development cap	22
	68CE	Research and development tax credits: publication of details	22
31		Section 81 amended (Officers to maintain secrecy)	22
32		Section 89DA amended (Taxpayer may issue notice of proposed adjustment for taxpayer assessment)	23
33		Section 108 amended (Time bar for amendment of income tax assessment)	23
34		Section 113D repealed (Amended assessments for research and development tax credits)	23
35		New section 113E inserted (Amended assessments: research and development tax credits)	23
	113E	Amended assessments: research and development tax credits	23
36		Section 138E amended (Certain rights of challenge not conferred)	23
37		Section 141EC amended (Definition of promoter)	23
Part 2			
Research and development tax credits: year 2 and subsequent years			
38		Application	24
		<i>Amendment to Income Tax Act 2007</i>	
39		Section LY 3 amended (When this subpart applies)	24
		<i>Amendments to Tax Administration Act 1994</i>	
40		Tax Administration Act 1994 amended	24
41		Section 3 amended (Interpretation)	24
42		New section 15ZC inserted (Certificates for research and development)	24
	15ZC	Certificates for research and development	24
43		New sections 68CB and 68CC inserted	25
	68CB	Research and development tax credits: general approval	25
	68CC	Research and development tax credits: greater than \$2 million approval	26
44		Section 138E amended (Certain rights of challenge not conferred)	28
Schedule 1			29
New schedules 21 and 21B inserted			

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Research and Development Tax Credits) Act **2018**.

2 Commencement

- (1) **Part 1** of this Act comes into force on 1 April 2019.
- (2) **Part 2** of this Act comes into force on 1 April 2020.

Part 1

Research and development tax credits: year 1

5

3 Application

This Part applies for the 2019–20 and later income years.

Amendments to Income Tax Act 2007

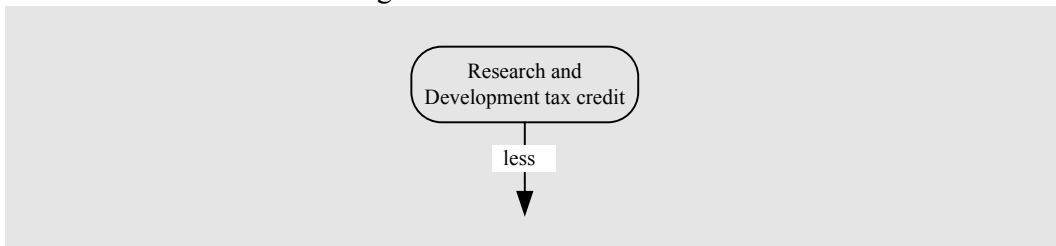
4 Income Tax Act 2007 amended

Sections 5 to 22 amend the Income Tax Act 2007.

10

5 Flowchart B4 amended (Satisfying income tax liability)

Flowchart B4 is amended by inserting the following immediately before the box labelled “Remaining credits”:



6 Section EE 6 amended (What is depreciable property?)

- (1) In section EE 6(1)(b), replace “income.” with “income; or”, and insert: 15
 - (c) in deriving exempt income, and it is used in performing research and development activities.
- (2) In section EE 6, in the list of defined terms, insert “research and development tax credit”.

7 New heading and section GB 56 inserted

20

Before the heading to subpart GC, insert:

Arrangements involving research and development tax credits

GB 56 Arrangements involving research and development tax credits

When this section applies

- (1) This section applies when—

25

(a)	an arrangement has a direct or indirect purpose or effect, not being a merely incidental purpose or effect, of defeating the intent and application of subpart LY (Research and development tax credits):	
(b)	eligible research and development expenditure under section LY 5 (Eligible research and development expenditure) for relevant goods and services is more than the market value consideration for them (an inflated transaction).	5
	<i>Credit reduced</i>	
(2)	A person's entitlement to a research and development tax credit is reduced to the amount that the Commissioner considers would have arisen had the arrangement or inflated transaction not occurred, whether or not the person is a party to the arrangement or the inflated transaction.	10
	Defined in this Act: arrangement, eligible research and development expenditure, goods, research and development tax credit, services	
8	Section LA 4 amended (When total tax credit more than income tax liability)	15
(1)	After section LA 4(1)(c), insert:	
	(cb) fourth, a research and development tax credit:	
(2)	In section LA 4(1)(d), replace "fourth" with "fifth".	
(3)	In section LA 4, in the list of defined terms, insert "research and development tax credit".	20
9	Section LA 5 amended (Treatment of remaining credits)	
(1)	After section LA 5(4), insert:	
	<i>Research and development tax credits</i>	
(4B)	A person's research and development tax credit is used by—	25
(a)	first, the Commissioner refunding the tax credit up to a maximum of \$255,000, by treating it as a refundable tax credit and applying section LA 6(2), if the person—	
(i)	meets the corporate eligibility criteria in section MX 2 (Corporate eligibility criteria); and	30
(ii)	meets the wage intensity criteria in section MX 3 (Wage intensity criteria); and	
(iii)	does not derive exempt income; and	
(iv)	is not associated with a person that derives exempt income:	
(b)	secondly, applying section LY 8 (Carry forward for remaining research and development tax credits), to the extent to which paragraph (a) does not apply to the tax credit.	35

- (2) In section LA 5, in the list of defined terms, insert “associated person”, “exempt income”, “listed company”, and “research and development tax credit”.

10 New subpart LY inserted (Research and development tax credits)

After subpart LX, insert:

5

Subpart LY—Research and development tax credits

LY 1 Research and development tax credits

Purpose

- (1) The purpose of this subpart is to—
- (a) provide a tax credit (a **research and development tax credit**) to a person for performing, or contracting for the performance of, activities to create new knowledge, or new or improved processes, services, or goods; and 10
 - (b) ensure that business-as-usual activities do not qualify for research and development tax credits. 15

General structure of this subpart

- (2) In this subpart—
- (a) **research and development activity** is defined in **section LY 2**, along with other key terms;
 - (b) **section LY 3** provides when this subpart applies: 20
 - (c) the amount of a person’s research and development tax credit for a tax year is calculated under **section LY 4** by reference to their expenditure or loss in relation to their research and development activities;
 - (d) **section LY 8** provides for the carry forward of unused research and development tax credits from the current tax year: 25
 - (e) **section LY 9** provides an empowering provision for the Governor-General to make Orders in Council to maintain the lists in **schedules 21 and 21B** (which relate to activities and expenditure or loss for the research and development tax credit);
 - (f) **section LY 10** provides for a 5-yearly evaluation of the research and development tax credit regime. 30

Tax credit

- (3) A person has a tax credit for the tax year equal to the total of—
- (a) their credit calculated under **section LY 4**; and
 - (b) their credit carried forward and credited to the year, as provided by **section LY 8**. 35

Anti-avoidance

- (4) **Section GB 56** (Arrangements involving research and development tax credits) provides a specific anti-avoidance provision.

Expenditure or loss: GST

- (5) For the purposes of this subpart, a person's expenditure or loss for a corresponding income year for the supply of goods or services to the person is reduced by subtracting the amount, if any, of input tax applying to the supply of the goods or services to the person. This subsection is overridden by **subsections (6) and (7)**. 5

Deductions from output tax

- (6) Expenditure or loss is reduced by the amount of any relevant adjustment taken into account in the income year under section 20(3)(e) of the Goods and Services Tax Act 1985. 10

Adjustments for output tax

- (7) Expenditure or loss is increased by adding a relevant amount of deductible output tax that the person has for the income year. 15

Defined in this Act: amount, deductible output tax, goods, income year, research and development activity, research and development tax credit, services, tax year

LY 2 Key terms*Meaning of core research and development activity* 20

- (1) **Core research and development activity**—
- (a) means an activity that—
 - (i) is conducted using a systematic approach; and
 - (ii) has a material purpose of creating new knowledge, or new or improved processes, services, or goods; and 25
 - (iii) has a material purpose of resolving scientific or technological uncertainty; and
 - (iv) has its day-to-day management conducted in New Zealand; but
 - (b) does not include an activity, if knowledge required to resolve the uncertainty, described in **paragraph (a)(iii)**, is— 30
 - (i) publicly available;
 - (ii) deducible by a competent professional working in the relevant scientific or technological field; and
 - (c) does not include an activity to the extent to which it is performed outside New Zealand; and 35
 - (d) does not include an activity to the extent to which it is described in **schedule 21, part A**.

Meaning of research and development activity

- (2) **Research and development activity**, for a person, means an activity that is—
- (a) a core research and development activity;
 - (b) a supporting research and development activity.

Meaning of supporting research and development activity

- (3) **Supporting research and development activity**—
- (a) means an activity that has the only or main purpose of, is required for, and integral to, conducting a person's core research and development activity; but
 - (b) does not include an activity to the extent to which the supporting activity is described in **schedule 21, part B**.

Defined in this Act: core research and development activity, goods, New Zealand, research and development activity, services, supporting research and development activity

LY 3 When this subpart applies*When this subpart applies*

- (1) This subpart applies for a person for an income year, if—
- (a) the person performs a core research and development activity in New Zealand, or, if the person does not perform a core research and development activity in New Zealand, a research and development contractor performs a core research and development activity in New Zealand on behalf of the person as part of a business that the contractor carries on in New Zealand through a fixed establishment in New Zealand; and
 - (b) the person carries on a business in New Zealand through a fixed establishment in New Zealand; and
 - (c) the person or a company in the same group of companies as the person has the following bundle of rights in relation to the relevant core research and development activity:
 - (i) the sole right to start the activity; and
 - (ii) the sole right to stop the activity; and
 - (iii) the sole right to change the direction of the activity; and
 - (iv) the sole right to choose whether results are followed up on or not; and
 - (d) either—
 - (i) the person or a company that is both resident in a country with which New Zealand has a double tax agreement, and in the same group of companies as the person, owns the results of the relevant core research and development activity and any related supporting research and development activities; or

- (ii) the person may use the results of the relevant core research and development activity and any related supporting research and development activities for no consideration.

When this subpart does not apply

- (2) Despite **subsection (1)**, this subpart does not apply for a person— 5
 - (a) if they fail to file a return of income for the income year on or before the date that is 1 year after the latest date for them to file the return of income for the year under section 37 of the Tax Administration Act 1994: 10
 - (b) if they receive a Callaghan Innovation Growth Grant: 10
 - (c) to the extent to which the person is a research and development contractor for another person in relation to a research and development activity:
 - (d) if the person is, or is directly or indirectly controlled by, or is associated with,—
 - (i) a Crown research institute: 15
 - (ii) a district health board:
 - (iii) a tertiary education organisation:
 - (e) if the person is a partner in a partnership or has owner’s interests for a look-through company, and the person is not resident in New Zealand in the tax year. 20

Exception: carry forward

- (3) Despite **subsection (1)**, **sections LY 1(3)(b) and LY 8** may apply to carry forward a person’s research and development tax credit.

Special rule: non-business researcher

- (4) For the purposes of **subsection (1)**, a person that is a non-business researcher is treated as carrying on a business in New Zealand through a fixed establishment in New Zealand. 25

Defined in this Act: associated, business, core research and development activity, fixed establishment, New Zealand, non-business researcher, look-through company, owner’s interests, partner, partnership, research and development contractor, return of income 30

LY 4 Calculation of tax credit

When this section applies: thresholds

- (1) This section applies for a tax year and a person, ignoring, for purposes of this subsection only, sections HB 1 and HG 2 (which relate to entity transparency) and substituting as the relevant person the person’s partnership or look-through company, when— 35
 - (a) the person’s eligible research and development expenditure is \$50,000 or more for the year:

- (b) the person has, for the year, eligible research and development expenditure for an approved research provider performing a research and development activity on behalf of the person.

Calculation of tax credit

- (2) A person's research and development tax credit for a tax year is calculated using the formula— 5

$$0.15 \times \text{total eligible R \& D expenditure.}$$

Definition of item in formula

- (3) In the formula, **total eligible R & D expenditure** means the lesser of— 10
- (a) \$120,000,000, or the person's approved research and development cap if the person has an approved research and development cap:
- (b) the total amount of the person's eligible research and development expenditure for the corresponding income year.

Defined in this Act: amount, approved research and development cap, approved research provider, eligible research and development expenditure, look-through company, loss, partnership, research and development activity, tax year 15

LY 5 Eligible research and development expenditure

Eligible research and development expenditure

- (1) For the purposes of this subpart, **eligible research and development expenditure**— 20
- (a) means expenditure or loss, described in **schedule 21B, part A**, to the extent to which the expenditure or loss is incurred on a research and development activity for an income year; but
- (b) does not include expenditure or loss, to the extent to which the expenditure or loss is described in **schedule 21B, part B**: 25
- (c) does not include expenditure or loss that would have been incurred in the absence of the research and development activity, if—
- (i) the research and development activity is performed in the course of commercial production; and
- (ii) the expenditure or loss is not in relation to an employee's contribution to a research and development activity. 30

Modification of eligible research and development expenditure

- (2) Despite **subsection (1)**,— 35
- (a) an amount that is for a research and development contractor to perform research and development activities for the person is only eligible research and development expenditure to the extent to which **section LY 6** provides:
- (b) an amount that is incurred on a research and development activity performed outside New Zealand, or is a payment of salary or wages to a

non-resident, or is a payment for a service performed by a non-resident is only eligible research and development expenditure to the extent to which **section LY 7** provides.

Defined in this Act: amount, eligible research and development expenditure, income year, loss, New Zealand, non-resident, pay, research and development activity, research and development contractor, salary or wages

5

LY 6 Contracted research and development expenditure

When this section applies

- (1) This section applies for a person for the purposes of **section LY 5(2)(a)** if the person has an amount of expenditure or loss (**contracted research and development expenditure**) for a research and development contractor to perform research and development activities for them.

10

Calculation of eligible research and development expenditure: contracted research and development expenditure

- (2) For the purposes of **section LY 5(2)(a)**, eligible research and development expenditure includes an amount of contracted research and development expenditure, described in **subsection (1)**, to the extent of the amount calculated using the formula—

15

$$0.8 \times (\text{contract amount} - \text{ineligible expenditure}).$$

Definition of items in formula

20

- (3) In the formula,—
- (a) **contract amount** means the amount of consideration paid by the person to a contractor to perform research and development activities:
- (b) **ineligible expenditure** means the contractor's expenditure or loss in relation to performing the research and development activity, to the extent to which the expenditure or loss is not eligible research and development expenditure under **section LY 5(1)**, treating the contractor as the relevant person for the purposes of that section.

25

Relationship with subject matter

- (4) If an amount of contracted research and development expenditure, described in **subsection (1)**, is also foreign research and development expenditure, described in **section LY 7(1)**, then **section LY 7** overrides this section in relation to that amount.

30

Defined in this Act: amount, eligible research and development expenditure, loss, research and development activity, research and development contractor

35

LY 7 Foreign research and development expenditure

When this section applies

- (1) This section applies for a person for the purposes of **section LY 5(2)(b)** if the person has an amount of expenditure or loss (**foreign research and development expenditure**) that—

40

(a)	is incurred on a research and development activity performed outside New Zealand, and the research and development activity has the sole or main purpose of, and is required for, and is integral to, conducting a core research and development activity:	
(b)	is a payment of salary or wages to a non-resident person, and the non-resident performs the relevant activity in New Zealand:	5
(c)	is a payment for a service performed by a non-resident person, and the non-resident performs the relevant activity in New Zealand.	
	<i>Calculation of eligible research and development expenditure: foreign research and development expenditure</i>	10
(2)	For the purposes of section LY 5(2)(b) , eligible research and development expenditure includes an amount of foreign research and development expenditure, described in subsection (1) , to the extent the amount is less than or equal to the lesser of—	
(a)	the amount given by the formula in subsection (3) :	15
(b)	the amount given by the formula in subsection (5) .	
	<i>Actual overseas expenditure amount</i>	
(3)	For the purposes of subsection (2)(a) , the amount is calculated using the formula—	
	$(0.8 \times (\text{contract amount} - \text{ineligible expenditure})) + \text{foreign in-house amount}$.	20
	<i>Definition of items in formula</i>	
(4)	In the formula in subsection (3) ,—	
(a)	contract amount means the amount of foreign research and development expenditure, described in subsection (1)(a) and (c) , for another person (a foreign contractor) to perform research and development activities on behalf of the person:	25
(b)	ineligible expenditure means the foreign contractor's expenditure or loss in relation to performing the research and development activity, to the extent to which the expenditure or loss is not eligible research and development expenditure under section LY 5(1) , treating the foreign contractor as the relevant person for the purposes of that section:	30
(c)	foreign in-house amount means the amount of foreign research and development expenditure, described in subsection (1) , under section LY 5(1) but ignoring amounts for a foreign contractor to perform research and development activities for the person.	35
	<i>Capped overseas expenditure amount</i>	
(5)	For the purposes of subsection (2)(b) , the amount is calculated using the formula—	
	$0.1 \times \text{total NZ R \& D expenditure} \div 0.9$.	

Definition of item in formula

- (6) In the formula in **subsection (5)**, **total NZ R & D expenditure** means the amount of eligible research and development expenditure under **section LY 5**, but excluding any amount in relation to foreign research and development expenditure, described in **subsection (1)**, that would otherwise be eligible research and development expenditure. 5

Defined in this Act: amount, core research and development activity, eligible research and development expenditure, loss, New Zealand, non-resident, research and development activity

LY 8 Carry forward for remaining research and development tax credits*Carry forward* 10

- (1) For the purposes of **section LA 5(4B)** (Treatment of remaining credits), a person's remaining research and development tax credit for a tax year is carried forward to the next tax year and credited under **section LY 1(3)(b)** for that next tax year.

Carry forward: exception 15

- (2) Despite **subsection (1)**, if the person is a company, the remaining tax credit is extinguished and must not be carried forward and credited, unless the continuity rules in **subsection (3)** are met.

Continuity rules

- (3) For a company, the remaining tax credit may be carried forward and credited if a group of persons exists that has, for the continuity period,— 20
- (a) minimum voting interests in the company that total 49% or more; and
 - (b) when a market value circumstance exists for the company in the continuity period, minimum market value interests in the company that total 49% or more. 25

Some definitions

- (4) In this section,—
- continuity period** means the period that starts on the first day of the income year that corresponds to the tax year in which the research and development tax credit first arises and ends on the last day of the income year that corresponds to the tax year to which the credit is being carried forward and credited to: 30

minimum market value interest means the lowest market value interest that a person has in the company for the continuity period:

minimum voting interest means the lowest voting interest that a person has in the company for the continuity period. 35

Defined in this Act: company, continuity period, corresponding income year, group of persons, income year, market value circumstance, market value interest, minimum market value interest, minimum voting interest, research and development tax credit, tax credit, tax year, voting interest

LY 9 Orders in Council

The Governor-General may, by Order in Council made on the joint recommendation of the Minister of Revenue and the Minister of Research, Science, and Innovation,—

- (a) add the description of an activity or of an expenditure or loss, as applicable, to— 5
 - (i) **schedule 21:**
 - (ii) **schedule 21B:**
- (b) remove the description of an activity or of an expenditure or loss, as applicable, from— 10
 - (i) **schedule 21:**
 - (ii) **schedule 21B.**

Defined in this Act: loss

LY 10 Evaluation

The Minister of Research, Science, and Innovation will lay a report before the House of Representatives as soon as practicable after the end of the 2023–24 tax year, and every 5 years subsequent, objectively and independently evaluating the research and development tax credit regime in terms of all of the following: 15

- (a) the delivery of the policy intent of the regime: 20
- (b) the stimulation of spending on research and development activities:
- (c) the compliance costs of the regime:
- (d) the administration of the regime:
- (e) the compliance with the legal requirements of the regime by taxpayers.

Defined in this Act: research and development activities, research and development tax credits 25

11 Section OB 4 amended (ICA payment of tax)

- (1) After section OB 4(3)(f), insert:
 - (fb) income tax paid by crediting a research and development tax credit against income tax liability; or
- (2) In section OB 4, in the list of defined terms, insert “research and development tax credit”. 30

12 New section OB 9C inserted (ICA credit for research and development tax credit)

After section OB 9B, insert:

OB 9C ICA credit for research and development tax credit*Credit*

- (1) An ICA company has an imputation credit for the amount of research and development tax credit it is entitled to.

Table reference

- (2) The imputation credit in **subsection (1)** is referred to in **table O1: imputation credits, row 7C** (Research and development tax credits).

Credit date

- (3) The credit date is the date the company files its research and development supplementary return under **section 33E** of the Tax Administration Act 1994 for the income year.

Defined in this Act: amount, ICA company, imputation credit, research and development tax credit

13 Table O1 amended (Imputation credits)

After table O1, row 7B, insert:

7C	Research and development tax credits	day on which research and development supplementary return for income year is filed	section OB 9C
----	--------------------------------------	---	----------------------

14 Section OK 2 amended (MACA payment of tax)

- (1) After section OK 2(3)(c) insert:
- (cb) income tax paid by crediting a research and development tax credit against income tax liability; or
- (2) In section OK 2, in the list of defined terms, insert “research and development tax credit”.

15 New section OK 6C inserted (MACA research and development tax credit)

After section OK 6B, insert:

OK 6C MACA research and development tax credit*Credit*

- (1) A Maori authority has a Maori authority credit for the amount of research and development tax credit it is entitled to.

Table reference

- (2) The Maori authority credit in **subsection (1)** is referred to in **table O17: Maori authority credits, row 6C** (Research and development tax credits).

Credit date

- (3) The credit date is the date the Maori authority files its research and development supplementary return under **section 33E** of the Tax Administration Act 1994 for the income year.

Defined in this Act: amount, ICA company, imputation credit, research and development tax credit

5

16 Table O17 amended (Maori authority credits)

After table O17, row 6B, insert:

6C	Research and development tax credits	day on which research and development supplementary return for income year is filed	section OK 6C
----	--------------------------------------	---	----------------------

17 Section OP 5 amended (When credits and debits arise only in consolidated imputation group accounts)

Replace section OP 5(2)(bb) with:

10

(bb) **section OP 11C, row 6C** (Research and development tax credits):

18 Section OP 7 amended (Consolidated ICA payment of tax)

- (1) After section OP 7(3)(g), insert:

(gb) income tax paid by crediting a research and development tax credit against income tax liability; or

15

- (2) In section OB 7, in the list of defined terms, insert “research and development tax credit”.

19 New section OP 11C inserted (Consolidated ICA credit for research and development tax credit)

Before section OP 12, insert:

20

OP 11C Consolidated ICA credit for research and development tax credit*Credit*

- (1) A consolidated imputation group has an imputation credit for the amount of research and development tax credit that a group company is entitled to.

Table reference

- (2) The imputation credit in **subsection (1)** is referred to in table **O19: imputation credits of consolidated imputation groups, row 6C** (Research and development tax credits).

25

Credit date

- (3) The credit date is the date the group company files its research and development supplementary return under **section 33E** of the Tax Administration Act 1994 for the income year.

Defined in this Act: amount, company, consolidated imputation group, imputation credit, research and development tax credit

5

20 Table O19 amended (Imputation credits of consolidated imputation groups)

Before table O19, row 7, insert:

6C	Research and development tax credits	day on which research and development supplementary return for income year is filed	section OP 11C
----	--------------------------------------	---	-----------------------

21 Section YA 1 amended (Definitions)

10

- (1) This section amends section YA 1.
- (2) Insert, in appropriate alphabetical order:
approved research and development cap is defined in **section 3(1)** of the Tax Administration Act 1994
- (3) Insert, in appropriate alphabetical order:
approved research provider is defined in **section 3(1)** of the Tax Administration Act 1994
- (4) In the definition of **continuity period**, after paragraph (b), insert:
(c) is defined in **section LY 8(3)** (Carry forward for remaining research and development tax credits) for the purposes of that section
- (5) In the definition of **continuity provisions**, before paragraph (fb), insert:
(fba) **section LY 8** (Carry forward for remaining research and development tax credits):
- (6) Insert, in appropriate alphabetical order:
core research and development activity is defined in **section LY 2** (Key terms)
- (7) Insert, in appropriate alphabetical order:
eligible research and development expenditure is defined in **section LY 5** (Eligible research and development expenditure)
- (8) In the definition of **goods**,—
- (a) replace “in subpart MX (Tax credits for R&D tax losses)” with “in **subparts LY** (Research and development tax credits) and MX (Tax credits for R&D tax losses)”:

15

20

25

30

- (b) replace “and EA 3 (Prepayments)” with “EA 3 (Prepayments), and GB 56 (Arrangements involving research and development tax credits)”
- (9) Insert, in appropriate alphabetical order:
- ineligible technology expenditure—**
- (a) means, for a person, expenditure or loss that is incurred to acquire the right to use technology upon which a core research and development activity is based: 5
- (b) includes expenditure or loss that is incurred to acquire the right to use technology, if the relevant research and development activities to which the technology relates are an extension, continuation, development, or completion of the activities that produced that technology 10
- (10) Insert, in appropriate alphabetical order:
- internal software development expenditure—**
- (a) means, for a person, expenditure or loss that is incurred on developing software for the purpose of— 15
- (i) the internal administration of the person’s business or of an associate’s business:
- (ii) providing services, and the main reason why the recipients of the services use the services is not the use of the person’s computer technology or software itself, but rather the services themselves; 20
but
- (b) does not include expenditure or loss that is incurred for the purpose of developing software, if—
- (i) the person’s main purpose is disposing of the software or a right to use the software to recipients who are not associated with the person: 25
- (ii) the software is an integral part of goods that the person disposes of in the ordinary course of business
- (11) In the definition of **minimum market value interest**, after paragraph (b), insert: 30
- (c) is defined in **section LY 8(4)** (Carry forward for remaining research and development tax credits) for the purposes of that section
- (12) In the definition of **minimum voting interest**, after paragraph (b), insert:
- (c) is defined in **section LY 8(4)** (Carry forward for remaining research and development tax credits) for the purposes of that section 35
- (13) Insert, in appropriate alphabetical order:
- non-business researcher** means—
- (a) a tax charity:

- (b) an industry organisation to which a levy is payable under New Zealand statute
- (14) Insert, in appropriate alphabetical order:
research and development activity is defined in **section LY 2** (Key terms)
- (15) Insert, in appropriate alphabetical order: 5
research and development contractor—
- (a) means, for a research and development activity and a person (**person A**), another person (the **contractor**) that performs the research and development activity on behalf of person A:
- (b) does not include a non-business researcher described in the definition of **non-business researcher, paragraph (b)** 10
- (16) Insert, in appropriate alphabetical order:
research and development tax credit means a tax credit under **section LY 1** (Research and development tax credits)
- (17) In the definition of **residual income tax**, after paragraph (b)(ix), insert: 15
(x) **section LY 1** (Research and development tax credits):
- (18) In the definition of **services**,—
- (a) in paragraph (a), delete “, and subpart MX (Tax credits for R&D tax losses),”:
- (b) in paragraph (b), replace “subpart MX” with “**GB 56** (Arrangements involving research and development tax credits), **subparts LY** and **MX**”. 20
- (19) Insert, in appropriate alphabetical order:
supporting research and development activity is defined in **section LY 2** (Key terms) 25
- 22 New schedules 21 and 21B inserted**
After schedule 20, insert, as set out in schedule 1 of this Act, **schedules 21 and 21B**.
- Amendments to Tax Administration Act 1994*
- 23 Tax Administration Act 1994 amended** 30
Sections 24 to 37 amend the Tax Administration Act 1994.
- 24 Section 3 amended (Interpretation)**
- (1) This section amends section 3(1).
- (2) Insert, in appropriate alphabetical order:
approved research and development cap means the approved research and development cap described in **section 68CD** 35

- (3) Insert, in appropriate alphabetical order:
approved research provider means an approved research provider described in **section 15ZB**
- (4) In the definition of **proscribed question**, after paragraph (d), insert:
 (e) a question related to research and development tax credits under **sub-part LY** of the Income Tax Act 2007

25 New heading and section 15ZB inserted

After section 15Z, insert:

<i>Research and development</i>		
15ZB	Approved research providers	10
(1)	A person is an approved research provider , if the Commissioner approves the person, as provided by subsections (2) to (7) , and the person keeps records in accordance with section 22(2)(kd) .	
(2)	The Commissioner may, in accordance with this section, approve a person, if the person makes an application in accordance with subsection (3) .	15
(3)	A person must apply to the Commissioner for approval in the form prescribed by the Commissioner.	
(4)	The Commissioner may only approve a person if, in the opinion of the Commissioner, the person—	
	(a) is capable of performing research and development activities on behalf of other persons; and	20
	(b) has in New Zealand the facilities needed to perform research and development activities; and	
	(c) is available to perform research and development activities on behalf of other persons not associated with them; and	25
	(d) performs or will perform research and development activities on behalf of other persons for market value consideration.	
(5)	A person may apply for approval as an approved research provider by providing information to the Commissioner in the prescribed form. They may also apply for a revocation of approval.	30
(6)	If the Commissioner approves a person, the Commissioner must notify the person and publish the approval, in a publication chosen by the Commissioner.	
(7)	The Commissioner may, at the Commissioner's discretion, revoke approval as an approved research provider. The Commissioner must give the person reasons for the exercise of the Commissioner's discretion, and specify the date from which the revocation takes effect.	35

- 26 Section 22 amended (Keeping of business and other records)**
- (1) In section 22(2)(eb), replace “section LH 2” with “**subpart LY**”.
- (2) Replace section 22(2)(ec) with:
- (ec) is an approved research provider:
- (3) In section 22(2)(kc), replace “section LH 2” with “**subpart LY**”. 5
- (4) Replace section 22(2)(kd) with:
- (kd) if the person is an approved research provider, the following matters:
- (i) ongoing compliance with **section 15ZB(4)**; and
- (ii) amounts derived and incurred by the person performing research and development activities on behalf of other persons; and 10
- 27 New section 33E inserted (Research and development tax credits: supplementary return)**
- After section 33D, insert:
- 33E Research and development tax credits: supplementary return**
- A person who is entitled to a research and development tax credit must file a research and development supplementary return for a tax year in an electronic format prescribed by the Commissioner on or before the day that is 30 days after they file a return of income for the tax year under section 37. 15
- 28 New section 36BE inserted (Research and development tax credits: electronic formats)** 20
- After section 36BD, insert:
- 36BE Research and development tax credits: electronic formats**
- (1) The Commissioner must prescribe 1 or more electronic formats in which a research and development supplementary return under **section 33E** must be filed. 25
- (2) The Commissioner may, from time to time, set specifications for software for use in populating the research and development supplementary return, and related criteria for the use of specified software.
- 29 Section 36C amended (Particulars furnished in electronic format)**
- In section 36C(1), replace “35, 36” with “**33E**, 35, 36, **36BE**”. 30
- 30 New heading and sections 68CD and 68CE inserted**
- After section 68C, insert:

*Research and development***68CD Research and development tax credits: approved research and development cap**

- (1) For the purposes of **section LY 4** of the Income Tax Act 2007, the Commissioner may, in accordance with this section, approve for a person an amount greater than \$120,000,000 as the person's **approved research and development cap** for an income year. 5
- (2) A person may request approval for an approved research and development cap by providing information to the Commissioner in the prescribed form on or before the 7th day of the 2nd month after the end of the income year. 10
- (3) The Commissioner must not approve an approved research and development cap for a person unless—
- (a) the relevant research and development activities give rise to substantial net benefit for New Zealand; and
 - (b) the Commissioner has first consulted with the chief executive of the Ministry of Business, Innovation, and Employment. 15

68CE Research and development tax credits: publication of details

- (1) The Commissioner must publish, in a publication chosen by the Commissioner, the names of people who have received a research and development tax credit under **subpart LY** of the Income Tax Act 2007 and where the amount of their research and development tax credit falls for a tax year, using appropriate dollar bands. 20
- (2) The names and bands must not be published before 2 years elapse after the end of the tax year to which the relevant tax credit relates.

31 Section 81 amended (Officers to maintain secrecy) 25

Replace section 81(4)(w) and (x) with:

- (w) communicating to an officer, employee, or agent of the Treasury (as defined in section 2 of the Public Finance Act 1989), of Callaghan Innovation, of the Ministry of Business, Innovation, and Employment, or of a state sector entity responsible for any function related to research and development advice or incentives, information reasonably necessary for that person to perform their work in relation to evaluating (in accordance with **section LY 10** of the Income Tax Act 2007), administering, statistical reporting on, and policy formation for, tax credits provided in **subparts LY and MX** of that Act: 30
- (x) communicating to an officer, employee, or agent of Callaghan Innovation or of the Ministry of Business, Innovation, and Employment, information reasonably necessary for that person to perform their work in relation to offering research and development advice and incentives: 35

- 32 Section 89DA amended (Taxpayer may issue notice of proposed adjustment for taxpayer assessment)**
- After section 89DA(1)(a), insert:
- (ab) to the extent to which the assessment relates to an amount of research and development tax credit and the taxpayer has not filed a research and development supplementary return in relation to the credit within the time allowed under **section 33E**: 5
- 33 Section 108 amended (Time bar for amendment of income tax assessment)**
- (1) Repeal section 108(1B).
- (2) After section 108(1D), insert: 10
- (1E) Despite subsection (1), the Commissioner may not amend an assessment so as to increase an amount of research and development tax credit if 2 years have passed from the latest date to provide a return of income for the relevant tax year.
- 34 Section 113D repealed (Amended assessments for research and development tax credits)** 15
- Repeal section 113D.
- 35 New section 113E inserted (Amended assessments: research and development tax credits)**
- Before section 114, insert: 20
- 113E Amended assessments: research and development tax credits**
- A person may, in relation to research and development tax credits, only either issue a notice of proposed adjustment or make request for the Commissioner to amend under section 113 once within the time limit referred to in **section 108(1E)**. The Commissioner may not amend an assessment so as to increase the amount of tax credit in relation to any subsequent notice of proposed adjustment or request (*for example*: A person requests an increase in the amount of research and development tax credit already assessed. They cannot issue a NOPA or make another request in relation to the tax credit. Neither could the Commissioner make any adjustment in relation to the subsequent NOPA or request.) 25 30
- 36 Section 138E amended (Certain rights of challenge not conferred)**
- In section 138E(1)(e)(iv), replace “sections” with “sections **15ZB**”.
- 37 Section 141EC amended (Definition of promoter)**
- (1) In section 141EC(1)(a),— 35
- (a) replace “a plan” with “a plan, software,”;
- (b) replace “; or” with “:”.

- (2) In section 141EC(1)(b), replace “.” with “:”, and insert:
- (c) a person who provides services on a contingency fee basis in relation to research and development tax credit claims.

Part 2

Research and development tax credits: year 2 and subsequent years 5

38 Application

This Part applies for the 2020–21 and later income years.

Amendment to Income Tax Act 2007

39 Section LY 3 amended (When this subpart applies)

After **section LY 3(1)(b)** of the Income Tax Act 2007, insert: 10

- (bb) the relevant core research and development activity or the person, as applicable, is approved under either **section 68CB** or **section 68CC** of the Tax Administration Act 1994; and

Amendments to Tax Administration Act 1994

40 Tax Administration Act 1994 amended 15

Sections 41 to 44 amend the Tax Administration Act 1994.

41 Section 3 amended (Interpretation)

- (1) This section amends section 3(1).
- (2) Insert, in appropriate alphabetical order:
- research and development certificate** means a research and development certificate described in **section 15ZC** 20

42 New section 15ZC inserted (Certificates for research and development)

After **section 15ZB**, as inserted by this Act, insert:

15ZC Certificates for research and development

- (1) For the purposes of **section 68CC**, a **research and development certificate** 25 is a certificate, in the form prescribed by the Commissioner, in relation to a person’s research and development tax credit for an income year given to the person by another person who is an accepted research and development certifier that is not associated with the person.
- (2) For the purposes of this section, an **accepted research and development certifier** 30 means any person that the Commissioner has approved as an accepted research and development certifier, if the person makes a statutory declaration of the following matters and gives it to the Commissioner, namely a declaration—

- (a) that the person is competent in applying appropriate accounting and legal standards in relation to research and development tax credits; and
- (b) declaring any other matters required by the Commissioner to be declared for the purposes of assuring the Commissioner that the person has the legal, accounting, and scientific or technical expertise to complete a research and development certificate. 5
- (3) A person may request approval as an accepted research and development certifier by providing information to the Commissioner in the prescribed form. They may also request revocation of approval. 10
- (4) The Commissioner must not approve a person whose approval the Commissioner has revoked in the last 2 years. 10
- (5) If the Commissioner approves a person, the Commissioner must notify the person, and publish the approval in a publication chosen by the Commissioner.
- (6) The Commissioner may, at the Commissioner's discretion, revoke approval as an accepted research and development certifier. If the Commissioner revokes a person's approval, the Commissioner must notify the person, and publish the revocation in a publication chosen by the Commissioner. 15
- (7) The Commissioner must revoke a person's approval if the person has given a research and development certificate to a person (**person B**) who has, in the 2 years before the income year, been liable to a shortfall penalty in relation to research and development tax credits, unless person B wilfully misled the person. 20

43 New sections 68CB and 68CC inserted

Before **section 68CD**, as inserted by this Act, insert:

- 68CB Research and development tax credits: general approval** 25
- (1) This section does not apply if a person—
 - (a) meets the requirements of **section 68CC(1)**; and
 - (b) chooses to apply **section 68CC**.
 - (2) For the purposes of **section LY 3(1)(bb)** of the Income Tax Act 2007, a person's core research and development activities are approved for the income year, if the Commissioner approves the activities, as provided by **subsections (3) to (7)**, and— 30
 - (a) the person's application for approval does not contain a material omission or misrepresentation; and
 - (b) the person complies with any conditions in the Commissioner's approval; and 35
 - (c) there is no material change in the provisions in **subpart LY** of that Act and any associated provisions; and

- (d) if the Commissioner approves a person and their activities for more than 1 income year, the person has given the Commissioner, on or before the 7th day of the 2nd month after the end of the relevant income year, notice that there have been no material changes for their business for the relevant income year. 5
- (3) The Commissioner may, in accordance with this section, approve a person's core research and development activities for an income year (the **first income year**) and up to 2 further consecutive income years, if the person makes an application in accordance with **subsection (4)** on or before the 7th day of the 2nd month after the end of the first income year. 10
- (4) A person must apply to the Commissioner for approval in the form prescribed by the Commissioner, including—
- (a) the activities the person wants the Commissioner to approve; and
 - (b) the income years for which approval is sought; and
 - (c) any other information required by the Commissioner. 15
- (5) The Commissioner may only approve a person's activities to the extent to which, in the opinion of the Commissioner, the relevant activity is a core research and development activity.
- (6) If the Commissioner approves a person's activities for an income year, the Commissioner must notify the person what activities of the person the Commissioner approves of as core research and development activities, for which income years, and any conditions upon which the approval is made. 20
- (7) The Commissioner may vary an approval, upon application, if the variation application meets the requirements in **subsection (2)(a)**, the variation applied for meets the requirements of **subsection (5)**, and the application is made on or before the 7th day of the 2nd month after the end of the relevant income year. If the Commissioner accepts the variation, then the Commissioner must notify the person in accordance with **subsection (6)**. 25
- 68CC Research and development tax credits: greater than \$2 million approval**
- (1) This section applies ignoring, for purposes of this subsection only, sections HB 1 and HG 2 of the Income Tax Act 2007 (which relate to entity transparency) and substituting as the relevant person the person's partnership or look-through company, if a person chooses to apply this section, and— 30
- (a) has or reasonably estimates that the person will have eligible research and development expenditure greater than \$2 million for an income year; or 35
 - (b) is a member of a group of companies that has or reasonably estimates that they will have eligible research and development expenditure greater than \$2 million for an income year.

- (2) For the purposes of **section LY 3(1)(bb)** of that Act, a person is approved for the income year to the extent to which—
- (a) the person and the relevant members of the group under **subsection (1)(b)**, if applicable, have,—
 - (i) on or before the 7th day of the 2nd month after the end of the income year, notified the Commissioner that they elect to use this section and, in the case of an estimate under **subsection (1)**, further notified the amount of the estimate; and 5
 - (ii) for the income year, given to the Commissioner a research and development certificate with their research and development supplementary returns (*see: sections 15ZC and section 33E*): 10
 - (b) the Commissioner approves the person's criteria and methodologies, as provided by **subsections (3) to (7)**, and—
 - (i) the person's application for approval does not contain a material omission or misrepresentation; and 15
 - (ii) the person complies with any conditions in the Commissioner's approval; and
 - (iii) there is no material change in the provisions in **subpart LY** of the Income Tax Act 2007 and any associated provisions; and
 - (iv) has, for the income year, given to the Commissioner a research and development certificate with the person's research and development supplementary return (*see: sections 15ZC and 33E*). 20
- (3) The Commissioner may, in accordance with this section, approve a person's criteria and methodologies for an income year (the **first income year**) and up to 2 further consecutive income years, if the person makes an application in accordance with **subsection (4)** on or before the 7th day of the 2nd month after the end of the first income year. 25
- (4) A person must apply to the Commissioner for approval in the form prescribed by the Commissioner, including—
- (a) the criteria and methodologies the person wants the Commissioner to approve; and 30
 - (b) the income years for which approval of a criterion or methodology is sought; and
 - (c) any other information required by the Commissioner.
- (5) The Commissioner may approve— 35
- (a) appropriate criteria and methodologies for determining whether an activity is a core research and development activity, a supporting research and development activity, or not a research and development activity at all:

- (b) appropriate criteria and methodologies for determining whether an amount of expenditure or loss is or is not an amount of eligible research and development expenditure.
- (6) If the Commissioner approves a person's criteria and methodologies for an income year, the Commissioner must notify the person what criteria and methodologies of the person the Commissioner approves of, for which income years, and any conditions upon which the approval is made. 5
- (7) The Commissioner may vary an approval, upon application, if the variation application meets the requirements in **subsection (2)(b)**, the variation applied for meets the requirements of **subsection (5)**, and the application is made on or before the 7th day of the 2nd month after the end of the relevant income year. If the Commissioner accepts the variation, then the Commissioner must notify the person in accordance with **subsection (6)**. 10
- (8) The Commissioner may revoke an approval, with effect from the beginning of the income year in which the revocation is made, if the Commissioner considers that the person has classified an activity, or an expenditure or loss in such a way so as to defeat the intent and application of **subpart LY** of the Income Tax Act 2007. 15
- 44 Section 138E amended (Certain rights of challenge not conferred)**
- (1) In section 138E(1)(e)(iv), replace "**15ZB**" with "**15ZB, 15ZC**". 20
- (2) In section 138E(1)(e)(iv), replace "63" with "63, **68CB, 68CC**".

Schedule 1
New schedules 21 and 21B inserted

s 22

Schedule 21
Excluded activities for research and development activities tax credits

5

s LY 2

Part A		
Activities that are excluded from the definition of <i>core research and development activity</i>		
1	Preproduction activities, including demonstration of commercial viability and tooling up.	10
2	Routine de-bugging of existing computer software.	
3	Supporting or making minor improvements to existing computer software using known methods.	15
4	Routine software and computer maintenance.	
5	Prospecting for, exploring for, or drilling for, minerals, petroleum, natural gas, or geothermal energy.	
6	Market research, market testing, market development, or sales promotion, including consumer surveys.	20
7	Commercial, legal, or administrative aspects of patenting, licensing, or other similar activities.	
8	Activities involved in complying with statutory requirements or standards.	
9	Management studies.	
10	Activities relating to organisational design.	25
11	Software development undertaken for the only or main purpose of using the resultant software in the payroll, accounting, executive or management information, human resources, enterprise resource planning, invoicing, or inventory systems of the person's business or of an associate's business.	
12	Research in social sciences, arts, or humanities.	30
13	Quality control or routine testing of processes, services, or goods.	
14	Routine collection of information.	
15	Minor adaption of, or improvement to, existing processes, services, or goods.	
16	Bug testing, beta testing, system requirement testing, user acceptance testing, and data integrity testing.	35

17	Data mapping and data migration testing.	
18	Testing or comparing the efficiency of algorithms that are already known to work.	
19	Testing security protocols or arrangements.	
20	Converting existing systems to new software platforms.	5
21	Making cosmetic or stylistic changes to processes, services, or goods.	
22	Reproduction of a commercial product or process by a physical examination of an existing system or from plans, blueprints, detailed specifications, or publicly available information.	
23	Carrying out routine operations on data, including presentation of data.	10
24	If section 68CB of the Tax Administration Act 1994 applies for the person, activities that are not approved under that section.	

Part B

Activities that are excluded from the definition of *supporting research and development activity*

1	Preproduction activities, including demonstration of commercial viability and tooling up.	
2	Routine de-bugging of existing computer software.	
3	Supporting or making minor improvements to existing computer software using known methods.	20
4	Routine software and computer maintenance.	
5	Prospecting for, exploring for, or drilling for, minerals, petroleum, natural gas, or geothermal energy.	
6	Market development or sales promotion, including consumer surveys.	
7	Commercial, legal, or administrative aspects of patenting, licensing, or other similar activities.	25
8	Activities involved in complying with statutory requirements or standards for pre-existing processes, services, or goods.	
9	Management studies.	
10	Activities relating to organisational design.	30
11	Software development undertaken for the only or main purpose of using the resultant software in the payroll, accounting, executive or management information, human resources, enterprise resource planning, invoicing, or inventory systems of the person's business or of an associate's business.	

Schedule 21B

Expenditure or loss for research and development tax credits

s LY 5

Part A

Eligible expenditure or loss for research and development tax credits 5

- 1 Depreciation loss for an item of depreciable property to the extent to which the depreciable property is used in performing a research and development activity.
- 2 Expenditure or loss that is not paid to employees and is incurred in acquiring goods and services that are not depreciable property, to the extent to which the goods and services relate to performing a research and development activity. 10
- 3 Amounts paid to employees, to the extent to which the employee's employment relates to performing a research and development activity.

Part B

Ineligible expenditure or loss for research and development tax credits 15

- 1 Amounts that, but for this clause, are eligible research and development expenditure under **section LY 5**, to the extent to which the amounts, together with associated persons' eligible research and development expenditure returned by them in their research and development supplementary return, are greater than \$120,000,000. 20
- 2 Expenditure or loss incurred in acquiring depreciable property.
- 3 Expenditure or loss to the extent to which it contributes to the cost of depreciable tangible property, if the depreciable tangible property is not used solely in performing a research and development activity.
- 4 Depreciation loss for an item of depreciable property to the extent to which the item's cost is eligible research and development expenditure under **section LY 5**. 25
- 5 Depreciation loss for an item of depreciable property, if the item is in a pool of depreciable property and an item in the pool is not used solely in performing a research and development activity. 30
- 6 Depreciation loss for an item of depreciable property acquired from an associated person, if the associate has used the item for a research and development activity, to the extent to which the depreciation loss relates to consideration paid to the associated person for the acquisition of the item in excess of the associate's adjusted tax value for the property at the time of acquisition. 35
- 7 Amounts for goods or services, other than a right to use property, acquired directly or indirectly from an associated person to the extent to which the con-

	sideration paid to the associated person for the goods or services is more than the lowest cost of the goods and services to an associate.	
8	Amount for a right to use property acquired from an associate, to the extent to which the consideration paid to the associate for the goods or services that relate to the right is more than the market value of the right.	5
9	Expenditure on employee share schemes.	
10	Expenditure on employee recruitment and relocation.	
11	Payments of bonuses to employees.	
12	Expenditure under a financial arrangement.	
13	A deduction under sections DB 5 to DB 15 (which relate to financing and financial arrangement adjustments).	10
14	Professional fees incurred in determining a person's entitlement or lack of entitlement to a research and development tax credit.	
15	Expenditure or loss in relation to acquiring an interest in intangible property other than software.	15
16	Expenditure or loss in relation to software that is bespoke or customised, or is not widely commercially available.	
17	Amounts that, but for this clause, are both eligible research and development expenditure under section LY 5 and internal software development expenditure, to the extent to which the amounts, together with associated persons' amounts that are both eligible research and development expenditure and internal software development expenditure, returned by them in their research and development supplementary return, are greater than \$3 million. For the purposes of this clause only, sections HB 1 and HG 2 (which relate to entity transparency) are ignored and the person's partnership or look-through company is substituted as the relevant person.	20
18	Expenditure or loss in relation to goods and services, to the extent to which the consideration paid for the goods and services is greater than market value consideration.	
19	Gifts.	30
20	Expenditure or loss that is ineligible technology expenditure.	
21	Expenditure or loss for plant, machinery, or materials to commercialise research and development activities' results, including preproduction expenditure or loss.	
22	Expenditure or loss that is a precondition to, subject to the terms of, required by, or otherwise related to a grant made by the Crown or a local authority.	35
23	Expenditure or loss incurred in acquiring or producing goods, including expenditure or loss for energy (inputs), to the extent to which the expenditure or loss does not exceed the market value of goods that result from the total inputs being used in, or subject to, a process or transformation.	40

-
- 24 Expenditure or loss to the extent to which a country or territory outside New Zealand allows a credit of tax (a **foreign credit**) of a similar nature to the research and development tax credit for the expenditure or loss, and the person receives the foreign credit for the expenditure or loss.
- 25 Expenditure or loss that is not for an approved research provider performing a research and development activity on behalf of the person, if **section LY 4(1)(b)** applies, and **section LY 4(1)(a)** does not apply. 5