

Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill

Government Bill

Explanatory note

General policy statement

Trans-Tasman portability of retirement savings

The bill contains a number of amendments to the Income Tax Act 2007 and the KiwiSaver Act 2006 to give effect to the trans-Tasman portability of retirement savings. The portability arrangements will allow a person who has retirement savings in both Australia and New Zealand to consolidate them in one account in their current country of residence. The amendments give effect to an Arrangement signed by the Minister of Finance and the Australian Treasurer on 16 July 2009.

Retirement savings may only be transferred between a KiwiSaver scheme and an Australian complying superannuation fund regulated by the Australian Prudential Regulation Authority. A member must permanently emigrate to Australia and supply proof of their emigration to the provider. To protect the value of savings, transfers of retirement savings between New Zealand and Australia will be exempt from any entry or exit taxes. Amendments to the Income Tax Act 2007 ensure that an amount of Australia-sourced retirement sav-

ings transferred to a KiwiSaver scheme under the portability arrangements is exempt income at the point of entry.

The bill amends the rules governing the treatment of KiwiSaver balances after a member permanently emigrates from New Zealand. For permanent emigration to a country other than Australia, the current rules for transfers and cash withdrawals will apply. However, if a member permanently emigrates to Australia the following new rules will apply:

- A member will be able to transfer all of their Crown contributions—their member tax credits will not be recovered by the Crown.
- Retirement savings may not be withdrawn in cash.
- A member must transfer the full amount of their savings and not a partial amount.
- The requirements for proof of permanent emigration to Australia will be the same as for permanent emigration to other countries.
- A KiwiSaver member can request to transfer their savings any time after supplying the provider with proof of their permanent emigration to Australia.
- Fees charged by KiwiSaver providers on the transfer of retirement savings to Australia must not be unreasonable.
- Australian rules will provide that New Zealand-sourced retirement savings may not be transferred from Australia to a third country.

The following rules will apply to the principal sum of Australia-sourced retirement savings held in KiwiSaver:

- A person who is retired may withdraw their Australia-sourced retirement savings at age 60.
- The member tax credit of up to \$1,042.86 per year will not be paid on contributions to KiwiSaver schemes consisting of Australia-sourced retirement savings.
- Australia-sourced retirement savings may not be withdrawn to use for the purchase of a first home, diverted to a member's mortgage repayments under the mortgage diversion facility, or used to count towards eligibility for the deposit subsidy.

- Australia-sourced retirement savings may not be transferred to a third country.

The arrangements will come into effect approximately 2 months after New Zealand and Australia have exchanged notes informing each other that the necessary legislation has been enacted. This is expected to be during the second half of 2010.

KiwiSaver: enrolment of under 18 year olds

The KiwiSaver Act 2006 currently does not prescribe who can contract with a provider on behalf of an under 18 year old. It is at the discretion of the provider whether or not an application is accepted. Consequently, there have been complaints from parents, guardians and children. To provide certainty and clarity, the bill creates a new set of rules to prescribe how under 18 year olds can enrol in KiwiSaver. The proposed new rules prescribe that:

- Children under 16 years old may only be enrolled by their legal guardians, and may not enrol themselves in KiwiSaver.
- Children aged 16 to 17 must co-sign with their legal guardians in order to enrol in KiwiSaver. They will not be able to enrol themselves, and a legal guardian may not enrol a child aged 16 to 17 into KiwiSaver without the child's consent.

*KiwiSaver: consistency between PAYE and
KiwiSaver rules*

An amendment to the KiwiSaver Act 2006 will ensure that, if no PAYE deduction is required from the salary or wage of a child because they receive the tax credit for children, no KiwiSaver deductions are required to be made.

*KiwiSaver: provision of annual report via
hyperlink*

The trustees of a KiwiSaver scheme are required to send an annual report to all KiwiSaver members in their scheme. If an email address is provided, the annual report can be delivered in an electronic format through an email attachment. However, if the provider is unable to deliver the report via email, for example, because of firewalls or a lack of capacity in the recipient's email account, a hard copy of the

annual report must be supplied. This imposes additional compliance costs.

An amendment to the KiwiSaver Act 2006 will allow a scheme provider to fulfil the requirements to provide an annual report by sending a hyperlink in an email which links to the annual report, if the member has agreed to this in writing.

KiwiSaver: leasehold estate for first home withdrawal

A KiwiSaver member may not withdraw their savings to use for purchasing a first home if they have previously held an estate in land, unless their financial position is what would be expected of a first home buyer. The current definition of an estate includes a leasehold estate. Consequently, if a member has ever had their name on a rental lease agreement, they may not be eligible to make a first home withdrawal.

An amendment to the KiwiSaver scheme rules will ensure that individuals with an interest or past interest in a leasehold estate, such as a residential tenancy, will not be excluded from the first home withdrawal.

Distributions by co-operative companies

Existing provisions in the Income Tax Act 2007 permit a resident co-operative company to deduct a distribution to a member if the distribution is in proportion to trading stock transactions between the member and the co-operative. Amendments to the Income Tax Act 2007 relax the requirement for strict proportionality, permitting a 20% departure.

A company electing the deductible distribution treatment is also given some flexibility in setting a “record date” for the distribution under section 125 of the Companies Act 1993. A record date is the date on which entitlement to dividends is determined.

Cancellation of BETA debits from conduit-relieved dividends

Recent reforms to the international tax rules included the repeal of conduit tax relief and a 2-year phase out period for companies with debit balances in their branch equivalent tax accounts (BETAs). The

2-year transitional period for BETA debits was intended to relieve the double taxation that could occur when a dividend was taxed under the old rules ahead of the underlying income being taxed again under the new international tax rules.

It has since emerged that some companies may be able to use their BETA debit balances to effectively continue conduit tax relief. In order to prevent this, the bill makes amendments cancelling those BETA debits that arose from conduit-relieved dividends. Cancellation of these BETA debits will not lead to any double taxation (due to the fact that conduit-relieved dividends would not have been taxed in the first place).

Emissions units

Amendments are made to several of the provisions which address the income tax treatment of emissions units. These amendments align the income tax treatment of various transactions under the Permanent Forest Sink Initiative with the income tax treatment of post-1989 forest land units under the Emissions Trading Scheme. These amendments take effect from 1 January 2009, when tax provisions relating to the Emissions Trading Scheme took effect.

Meaning of controlled foreign company

Amendments to both the Income Tax Act 2004 and the Income Tax Act 2007 restore the effect of the Income Tax Act 1994 which provided that a foreign company is not a controlled foreign company if:

- a non-resident shareholder's control interests were equal to or greater than 40%; and
- no single New Zealand resident shareholder had control interests greater than the control interests of the non-resident.

The amendment applies from the beginning of the 2005–06 income year. The provision's retrospective nature validates taxpayers who have continued to disclose their interests in a foreign company as an interest in a controlled foreign company and return their attributed CFC income from controlled foreign companies on the basis of the original law. A savings provision protects a taxpayer who has taken a tax position on the basis of the current law in a return filed before the introduction of the bill.

Tax credits of trustees

An amendment to the Income Tax Act 2007 ensures that a trustee may use tax credits to satisfy the trustee's income tax liability in relation to trustee income. The amendment clarifies that a trustee is prevented from having a tax credit referred to in either subpart LC or LD.

Portfolio class land loss

Amendments are made to the Income Tax Act 2007 changing the definition of portfolio class land loss to ensure that tax losses associated with portfolio investments in portfolio foreign land-owning companies can be allocated to investors as they arise.

*Formula for calculating the maximum amount
for the total deduction of supplementary
dividend holding company*

An amendment to the formula in section LP 10(1) of the Income Tax Act 2007 corrects a drafting error in the formula. The amendment restores the formula to that in the corresponding provision of the Income Tax Act 2004 (section LE 4(2)). The amendment applies from the beginning of the 2008–09 income year, with a savings provision to protect taxpayers who have relied on the current formula.

Tax pooling

An amendment to the Income Tax Act 2007 clarifies the time an imputation credit arises for an ICA company that receives an entitlement to funds held in a tax pooling account by way of transfer of that entitlement from another ICA company. The amendment ensures that the time of the credit occurs at the time of the transfer of the entitlement. The amendment applies from the beginning of the 2008–09 income year.

*Extension of exemption for non-resident drilling
rig operators*

An amendment to the Income Tax Act 2007 extends an exemption for income derived by a non-resident from oil and gas exploration in an offshore permit area. The exemption was due to expire on 31 December 2009 but is extended to 31 December 2014.

Meaning of revenue account property

The amendments clarify the definition of revenue account property in section YA 1 of the Income Tax Act 2007 and section OB 1 of the Income Tax Act 2004 to ensure that if revenue account property becomes valueless, it does not cease to be revenue account property. This amendment ensures that the cost of revenue account property that becomes valueless may still be deductible under the general permission and allocated to the appropriate income year under section EA 1 (trading stock) or EA 2 (other revenue account property). The amendments apply from the beginning of the 2005–06 income year, when the Income Tax Act 2004 took effect.

Currency conversion rules

An amendment to the Income Tax Act 2007 codifies the Commissioner's extra-statutory practice of permitting alternative currency conversion methods and alternative rates instead of the actual exchange rates at the time a transaction occurs. The practice was adopted to reduce compliance costs for taxpayers arising from a Privy Council decision that currency conversions should be made at the actual exchange rate at the time of the transaction, unless otherwise provided by statute. The amendment applies from the beginning of the 2008–09 income year.

Charitable donee organisation

Cure Kids is being added to the list of charitable donee organisations in Schedule 32 of the Income Tax Act 2007. This will enable donors to obtain tax relief on their donations.

Offences relating to exemption certificates

Amendments to the Tax Administration Act 1994 limit the scope of the offence provision relating to exemption certificates for schedular payments, which was potentially wider than intended. The amendments clarify that:

- a zero rate of withholding can be applied to schedular payments; and
- a person commits a knowledge offence, under section 143A of the Tax Administration Act 1994, if the person alters an

exemption certificate issued by the Commissioner in relation to schedular payments; and

- a person commits a knowledge offence, under section 143A of the Tax Administration Act 1994, if the person uses or attempts to use an exemption certificate, that has expired or been cancelled by the Commissioner, to obtain a zero rate of withholding from schedular payments made to the person.

The amendments apply from the beginning of the 2008–09 income year.

Binding rulings

The binding rulings system was introduced in 1994 to provide taxpayers with greater certainty about the tax implications of entering into transactions for which the interpretation of tax law is a key element. A binding ruling, which is binding on the Commissioner, sets out how Inland Revenue will apply tax laws to a particular arrangement. A number of amendments are being made to the rules primarily to ensure that key provisions—in particular, the provisions that are intended to allow the Commissioner to rule on the general anti-avoidance provision—apply in the manner that has been understood by Inland Revenue, taxpayers, and the tax profession since the binding rulings system was introduced.

Gift duty exemptions

The Estate and Gift Duties Act 1968 (EGDA) is amended to exempt the following gifts from gift duty:

- transfers of assets by, and gifts made to, local or central government bodies (to apply from the date of enactment of the enabling legislation);
- gifts made to donee organisations (to apply from the date of enactment of the enabling legislation); and
- distributions of property made in accordance with a Court order under the Law Reform (Testamentary Promises) Act 1949 or the Family Protection Act 1955 (to apply retrospectively from 24 May 1999).

Clause by clause analysis

Clause 1 gives the title of the Act.

Clause 2 gives the commencement dates for provisions in the Act.

Part 1

Annual rates of income tax

Clause 3 sets the annual income tax rates for the 2010–11 tax year.

Part 2

Amendments to Income Tax Act 2007

Clauses 5 to 34 amend the *Income Tax Act 2007*.

Clause 5 amends *section CB 36* to provide for the income tax treatment of a disposal of an emissions unit issued under a forest sink covenant under *section 67Y* of the *Forests Act 1949*.

Clause 6 repeals *section CD 34* with effect from 1 April 2010.

Clause 7 inserts new *section CD 34B*, which provides for the income tax treatment of a distribution to a member of a co-operative company by the company or a subsidiary. The section distinguishes between distributions on transaction shares, on limited non-transaction shares, and on other shares.

Clause 8 inserts new *section CW 29B*, which provides that a person's income from an Australian complying superannuation scheme in an income year is exempt income if the person contributes it to a Kiwi-Saver scheme in the same income year.

Clause 9 amends *section CW 57(1)* to extend by 5 years, to 31 December 2014, the time limit on the exemption from income tax for income derived by a non-resident company involved in operating a ship to provide seismic survey readings or in drilling a well offshore.

Clause 10 amends *section DB 60* to provide for emissions units issued under a forest sink covenant.

Clause 11 amends *section DB 60B* to provide for liabilities incurred under a forest sink covenant.

Clause 12 amends *section DV 11* to consequentially change 2 cross-references affected by *clauses 6 and 7*.

Clause 13 amends *section ED 1* to provide for emissions units issued under a forest sink covenant.

Clause 14 amends *section EE 30* to correct a cross-reference to a schedule listing depreciation rates, applying for the 2008–09 and later income years.

Clause 15 amends *section EW 15E(1)(c)* to provide that the determination alternative methods may be applied for a financial arrangement hedging something that is not a financial arrangement.

Clause 16 amends *section EW 15F(1)(c)* to provide that the expected value method may be applied for a financial arrangement hedging something that is not a financial arrangement.

Clause 17 amends *section EW 15G(1)(c)* to provide that the modified fair value method may be applied for a financial arrangement hedging something that is not a financial arrangement.

Clause 18 amends the definition of *controlled foreign company* in *section EX 1* by providing that the control interest held by a resident must be less than the control interest held by a non-resident. The change applies for the 2008–09 and later income years except when an exception applies.

Clause 19 amends *section EX 21D* to correct a formatting error.

Clause 20 amends *section GC 1* to provide for emissions units issued under a forest sink covenant.

Clause 21 amends *section HC 24* to correct cross-references for the tax credits available to trustees.

Clause 22 amends *section HL 32* to provide for losses from certain types of investment in land made by a portfolio investment entity. The amendments come into effect on 1 October 2007.

Clause 23 amends *section HM 65*, reflecting the amendments made by *clause 19*. The amendments come into effect on 1 April 2010 and apply for the 2010–11 and later income years.

Clause 24 corrects a cross-reference in *section HZ 5*.

Clause 25 amends *section LC 3* to clarify that the section does not apply to a person who is non-resident throughout the income year.

Clause 26 amends *section LC 6* to clarify that the section does not apply to a person who is non-resident throughout the income year.

Clause 27 amends *section LP 10* to correct a formatting error in a formula. The amendment applies for the 2008–09 and later income years except if a savings provision applies.

Clause 28 amends *section OB 6* to clarify the availability of imputation credits to a company with funds in a tax pooling account. The amendment applies for the 2008–09 and later income years.

Clause 29 amends *section OE 7* to prevent the use of BETA debits to pay tax if the debits are from dividends that were subject to conduit tax relief.

Clause 30 inserts a new heading and new *section OE 11B*, which cancels a BETA debit balance if the debits are from dividends that were subject to conduit tax relief.

Clause 31 amends *section RA 13* to correct a cross-reference. The amendment applies for the 2008–09 and later income years.

Clause 32 amends *section YA 1*. *Subclause (2)* inserts a new definition of *Australian complying superannuation scheme*, as part of the implementation of the Arrangement for the trans-Tasman portability of retirement savings. *Subclause (3)* amends the definition of *charitable or other public benefit gift* so that the definition applies generally. *Subclause (4)* inserts an amended definition of *forest land emissions unit* and a new definition of *forest sink emissions unit*, to include references to emissions units issued under forest sink covenants. *Subclause (5)* inserts a new definition of *limited non-transaction shares* as part of the amendments affecting distributions by co-operative companies. *Subclause (6)* amends the definition of *member credit contribution*, as part of the implementation of the Arrangement for the trans-Tasman portability of retirement savings. *Subclause (7)* corrects a spelling mistake in the definition of *non-Kyoto greenhouse gas unit*. *Subclause (8)* inserts a new definition of *projected transactions shareholding* as part of the amendments affecting distributions by co-operative companies. *Subclause (9)* amends the definition of *replacement forest land emissions unit* to include references to emissions units issued under forest sink covenants. *Subclause (10)* amends the definition of *revenue account property* to clarify its meaning with effect from 1 April 2008. *Subclause (11)* amends the definition of *revenue account property* to clarify its meaning with effect from 6 October 2009. *Subclause (12)* inserts new definitions of *trading transactions* and

transaction shares as part of the amendments affecting distributions by co-operative companies.

Clause 33 amends *section YF 1* to authorise the Commissioner to approve alternative methods and rates for calculating the amount of New Zealand currency that is equivalent to an amount of a foreign currency. The amendment applies for the 2008–09 and later income years.

Clause 34 amends *schedule 32* by inserting the name of a donee organisation.

Part 3

Amendments to Tax Administration Act 1994

Clauses 36 to 70 amend the *Tax Administration Act 1994*.

Clause 36 amends *section 3*. *Subclause (2)* inserts a new definition of *Commissioner's official opinion* as part of the changes to the rules relating to binding rulings issued by the Commissioner. *Subclause (3)* inserts a new definition of *promoter* as a remedial amendment. *Subclause (4)* inserts a new definition of *proscribed question* as part of the changes to the rules relating to binding rulings issued by the Commissioner.

Clause 37 amends *section 24M* to clarify the effect of the section with application to the 2008–09 and later income years.

Clause 38 amends *section 24N* to clarify the effect of the section with application to the 2008–09 and later income years.

Clause 39 corrects a cross-reference in *section 41A* with application to the 2008–09 and later income years.

Clause 40 amends *section 90* by changing the publication in which the Commissioner must notify a determination.

Clause 41 amends *section 90AD* by changing the publication in which the Commissioner must notify a determination or notice.

Clause 42 amends *section 90A* by changing the publication in which the Commissioner must notify a determination.

Clause 43 amends *section 91AA* by changing the publication in which the Commissioner must notify a determination.

Clause 44 amends *section 91AAB* by changing the publication in which the Commissioner must notify a determination.

Clause 45 amends *section 91AAE* by changing references to the publication in which the Commissioner must notify the making or revocation of a determination.

Clause 46 amends *section 91AAH* to correct the cross-references to schedules containing depreciation rates.

Clause 47 amends *section 91AAM* by changing the publication in which the Commissioner must notify a determination.

Clause 48 amends *section 91AAN* by changing the publication in which the Commissioner must notify a determination.

Clause 49 amends *section 91AAO* by changing the publication in which the Commissioner must notify a determination.

Clause 50 amends *section 91IDA* by changing the publication in which the Commissioner must notify a determination.

Clause 51 amends *section 91IDE* by changing the publication in which the Commissioner must notify a determination.

Clause 52 amends *section 91E* to change the rules relating to matters on which the Commissioner may issue private rulings.

Clause 53 amends *section 91EA* as part of the changes to the rules relating to private rulings issued by the Commissioner.

Clause 54 amends *section 91EB* as part of the changes to the rules relating to private rulings issued by the Commissioner.

Clause 55 amends *section 91EF* as part of the changes to the rules relating to private rulings issued by the Commissioner.

Clause 56 amends *section 91EH* as part of the changes to the rules relating to private rulings issued by the Commissioner.

Clause 57 inserts new *section 91EJ* as part of the changes to the rules relating to private rulings issued by the Commissioner.

Clause 58 amends *section 91F* to change the rules relating to matters on which the Commissioner may issue product rulings.

Clause 59 amends *section 91FA* as part of the changes to the rules relating to product rulings issued by the Commissioner.

Clause 60 amends *section 91FB* as part of the changes to the rules relating to product rulings issued by the Commissioner.

Clause 61 amends *section 91FC* as part of the changes to the rules relating to product rulings issued by the Commissioner.

Clause 62 amends *section 91FD* as part of the changes to the rules relating to product rulings issued by the Commissioner.

Clause 63 amends *section 91FF* as part of the changes to the rules relating to product rulings issued by the Commissioner.

Clause 64 amends *section 91FH* as part of the changes to the rules relating to product rulings issued by the Commissioner.

Clause 65 amends *section 91FJ* by changing the publication in which the Commissioner must notify the withdrawal of a product determination.

Clause 66 inserts new *section 91FK* as part of the changes to the rules relating to product rulings issued by the Commissioner.

Clause 67 amends *section 120AA*, excluding the application of the rules relating to interest to a person if the person takes a tax position on the basis of advice given in a specified way by the Commissioner.

Clause 68 inserts new *section 120W*, providing that a taxpayer is not liable to pay interest on unpaid tax to the extent that the interest arises because the person relies on the official opinion of the Commissioner.

Clause 69 amends *section 141B*, providing that a taxpayer does not take an unacceptable tax position to the extent that the person relies on the official opinion of the Commissioner.

Clause 70 amends *section 141EC* by correcting a cross-reference.

Part 4

Amendments to KiwiSaver Act 2006

Clauses 72 to 80 amend the *KiwiSaver Act 2006*.

Clause 72 amends *section 4*. *Subclause (1)* inserts a definition of *Australian complying superannuation scheme* as part of the implementation of the Arrangement for the trans-Tasman portability of retirement savings. *Subclause (2)* inserts a new definition of *guardian* as part of the provision for children 16 and 17 years old to join the KiwiSaver scheme. *Subclause (3)* amends the definition of *member's accumulation* as part of the implementation of the Arrangement for the trans-Tasman portability of retirement savings.

Clause 73 amends *section 34* as part of the provision for children 16 and 17 years old to join the KiwiSaver scheme.

Clause 74 amends *section 35* as part of the provision for children 16 and 17 years old to join the KiwiSaver scheme.

Clause 75 amends *section 59B* as part of the implementation of the Arrangement for the trans-Tasman portability of retirement savings.

Clause 76 amends *section 59D* as part of the implementation of the Arrangement for the trans-Tasman portability of retirement savings.

Clause 77 amends *section 67* to correct a cross-reference

Clause 78 amends *section 122* to permit a KiwiSaver provider to distribute its annual report electronically.

Clause 79 amends *section 229* as part of the implementation of the Arrangement for the trans-Tasman portability of retirement savings.

Clause 80 amends *schedule 1* as part of the implementation of the Arrangement for the trans-Tasman portability of retirement savings.

Part 5

Amendments to other Acts and regulations

Clause 81 amends *section 20C* of the *Goods and Services Tax Act 1985* to correct the definition of an item in a formula.

Clause 82 amends *section 73* of the *Estate and Gift Duties Act 1968* to exempt from gift duty: a transfer made under certain orders of a court; a gift to an organisation that is part of central or local government; or a gift to an organisation that is a donee organisation under the *Income Tax Act 2007*. The exemption for a transfer made under a court order applies for transfers made on or after 24 May 1999.

Clause 83 amends *section EW 15D(1)(d)* of the *Income Tax Act 2004* to provide that the determination alternative to the IFRS method may be applied for a financial arrangement hedging something that is not a financial arrangement.

Clause 84 amends *section EW 15E(1)(c)* of the *Income Tax Act 2004* to provide that the expected value method and the equity-free fair value method may be applied for a financial arrangement hedging something that is not a financial arrangement.

Clause 85 amends the definition of *controlled foreign company* in *section EX 1* of the *Income Tax Act 2004* by providing that the control interest held by a resident must be less than the control interest held by a non-resident. The change applies for the 2005–06 and later income years except when an exception applies.

Clause 86 amends section OB 1 of the Income Tax Act 2004. Subclause (1) amends the definition of revenue account property to clarify its meaning with effect from 1 April 2005. Subclause (2) amends the definition of fair value method to correct a cross-reference.

Clause 87 amends schedule 9 of the Local Government Act 2002 to correct cross-reference errors, with effect from the 2005–06 and later income years.

Clause 88 amends Regulation 6 of the Tax Administration (Binding Rulings) Regulations 1999 to provide for the waiver of fees for binding rulings issued by the Commissioner.

Clause 89 amends Regulation 7 of the Tax Administration (Binding Rulings) Regulations 1999 to provide for the effect of goods and services tax on fees for binding rulings issued by the Commissioner.

Regulatory impact statement

The regulatory impact statement for the bill is available at:
<http://www.taxpolicy.ird.govt.nz/publications/files/LEGRIS1109.pdf>.

Hon Peter Dunne

**Taxation (Annual Rates,
Trans-Tasman Savings Portability,
KiwiSaver, and Remedial Matters)
Bill**

Government Bill

Contents

		Page
1	Title	5
2	Commencement	5
Part 1		
Annual rates of income tax		
3	Annual rates of income tax for 2010–11 tax year	6
Part 2		
Amendments to Income Tax Act 2007		
4	Income Tax Act 2007	6
5	Disposal of emissions units	6
6	Section CD 34 repealed	6
7	New section CD 34B inserted	7
	CD 34B Distributions to members of co-operative companies	7
8	New section CW 29B inserted	9
	CW 29B Amounts from Australian complying superannuation schemes reinvested in KiwiSaver schemes	9
9	Non-resident company involved in exploration and development activities	10
10	Acquisition of emissions units	10

**Taxation (Annual Rates, Trans-Tasman
Savings Portability, KiwiSaver, and
Remedial Matters) Bill**

11	Liabilities for emissions	10
12	Distribution to member of co-operative company, excluded from being dividend	10
13	Valuation of excepted financial arrangements	10
14	Economic rate for plant, equipment, or building, with high residual value	11
15	Determination alternatives	11
16	Expected value method	11
17	Modified fair value method	11
18	Meaning of controlled foreign company	11
19	Non-attributing active CFC: default test	12
20	Disposals of trading stock at below market value	12
21	Trustees' obligations	12
22	Treatment of portfolio class taxable loss and portfolio class land loss for tax year	12
23	Use of land losses of investor classes	13
24	Transitional provisions for PIE rules	13
25	Child's income	13
26	Tax credits for housekeeping	14
27	Limitation on deductions	14
28	ICA transfer from tax pooling account	14
29	BETA payment of income tax	15
30	New heading and section OE 11B inserted	15
	<i>Credit if debit balance including debits from conduit relief</i>	
	OE 11B Company with debit balance, including debits from conduit relief, at beginning of first affected income year	15
31	Payment dates for terminal tax	16
32	Definitions	16
33	General rules for currency conversion	18
34	Schedule 32—Recipients of charitable or other public benefit gifts	18

Part 3

Amendments to Tax Administration Act 1994

35	Tax Administration Act 1994	18
36	Interpretation	18
37	Exemption certificates for schedular payments	19
38	Special tax rate certificates for schedular payments	19
39	Returns by persons with tax credits for housekeeping payments and charitable or other public benefit gifts	20

**Taxation (Annual Rates, Trans-Tasman
Savings Portability, KiwiSaver, and
Remedial Matters) Bill**

40	Determinations in relation to financial arrangements	20
41	Notification of determinations and notices	20
42	Determinations in relation to apportionment of interest costs	20
43	Determinations in relation to standard-cost household service	20
44	Determinations relating to types and diminishing values of listed horticultural plants	21
45	Publication and revocation of determinations relating to livestock	21
46	Commissioner may decline to issue special rate or provisional rate	21
47	Applications for determinations	22
48	Determinations on rates for diminishing value of environmental expenditure	22
49	Determination on type of interest in FIF and use of fair dividend rate method	22
50	Content and notification of a public ruling	22
51	Withdrawal of a public ruling	22
52	Commissioner to make private rulings on request	22
53	Effect of a private ruling	23
54	Application of a private ruling	23
55	Assumptions in making a private ruling	23
56	Content and notification of a private ruling	24
57	New section 91EJ inserted	24
	91EJ Treatment of information	24
58	Commissioner may make product rulings	24
59	Effect of a product ruling	25
60	Application of a product ruling	25
61	Applying for a product ruling	25
62	Disclosure requirements	25
63	Assumptions in making a product ruling	26
64	Content and notification of a product ruling	26
65	Withdrawal of a product ruling	26
66	New section 91FK inserted	26
	91FK Treatment of information	26
67	Application of Part	27
68	New section 120W inserted	27
	120W Commissioner's official opinions	27
69	Unacceptable tax position	27
70	Definition of promoter	28

**Taxation (Annual Rates, Trans-Tasman
Savings Portability, KiwiSaver, and
Remedial Matters) Bill**

Part 4

Amendments to KiwiSaver Act 2006

71	KiwiSaver Act 2006	28
72	Interpretation	28
73	How to opt in	28
74	Opting in by persons under 18	29
75	Initial back-dated validation	29
76	What happens when initial back-dated validation ends, with no confirmed back-dated validation?	29
77	PAYE rules apply to deductions	30
78	Application of other provisions of Superannuation Schemes Act 1989	30
79	Regulations relating to mortgage diversion facility	30
80	Schedule 1—KiwiSaver scheme rules	30

Part 5

Amendments to other Acts and regulations

Goods and Services Tax Act 1985

81	Goods and services tax incurred in making certain supplies of financial services	33
----	---	----

Estate and Gift Duties Act 1968

82	Exemption for gifts to charities and certain bodies	34
----	---	----

Income Tax Act 2004

83	Determination alternatives to IFRS	34
84	Expected value method and equity-free fair value method	35
85	Meaning of CFC	35
86	Definitions	36

Local Government Act 2002

87	Schedule 9—Council-controlled organisations and transfer of undertakings	36
----	---	----

Tax Administration (Binding Rulings) Regulations 1999

88	Waiver of fees	37
89	Fees inclusive of goods and services tax	37

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act **2009**.

2 Commencement

5

(1) This Act comes into force on the day on which it receives the Royal assent, except as provided in this section.

(2) **Section 81** is treated as coming into force on 1 January 2005.

(3) **Sections 85, 86(1) and (3), and 87(1) and (3)** are treated as coming into force on 1 April 2005.

10

(4) **Sections 83, 84, and 86(2)** are treated as coming into force on 1 April 2007.

(5) **Section 22** is treated as coming into force on 1 October 2007.

(6) **Sections 14, 15, 16, 17, 18, 21, 25, 26, 27, 28, 31, 32(10) and (13), 33, 37, 38, 39, 46, and 87(2) and (4)** are treated as coming into force on 1 April 2008.

15

(7) **Sections 5, 10, 11, 13, 20, and 32(4), (7), (9), and (11)** are treated as coming into force on 1 January 2009.

(8) **Sections 19, 29, and 30** are treated as coming into force on 30 June 2009.

20

(9) **Section 9** comes into force on 31 December 2009.

(10) **Sections 6, 7, 12, 23, 24, 32(5), (8), and (12), and 34** come into force on 1 April 2010.

(11) **Sections 72(2), 73, 74, 77, 78, and 80(4)** come into force on 1 July 2010.

25

(12) **Sections 8, 32(2) and (6), 72(1) and (3), 75, 76, 79, and 80(1) to (3), (5), and (6)** come into force on the first day of the second month after the month in which the Governments of Australia and New Zealand exchange notes, as provided by clause 21 of the Arrangement between them on trans-Tasman retirement savings portability.

30

**Part 1
Annual rates of income tax**

- 3 Annual rates of income tax for 2010–11 tax year**
Income tax imposed by section BB 1 of the Income Tax Act 2007 must, for the 2010–11 tax year, be paid at the basic rates specified in schedule 1 of that Act. 5

**Part 2
Amendments to Income Tax Act 2007**

- 4 Income Tax Act 2007**
Sections 5 to 34 amend the Income Tax Act 2007. 10
- 5 Disposal of emissions units**
- (1) After section CB 36(4), the following is inserted:
“*Surrender of unit: under forest sink covenant*”
- “(4B) The person is treated as selling the unit for an amount of zero if the person transfers the emissions unit to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949.” 15
- (2) Section CB 36(6) is replaced by the following:
“*Surrender of post-1989 forest land emissions unit or forest sink emissions unit: for other purposes*” 20
- “(6) The person is treated as selling a post-1989 forest land emissions unit or forest sink emissions unit for an amount equal to the unit’s market value if the person surrenders the emissions unit other than—
“(a) for emissions in relation to post-1989 forest land: 25
“(b) by a transfer to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949.”
- (3) In section CB 36, in the list of defined terms, “forest sink emissions unit” is inserted.
- 6 Section CD 34 repealed** 30
Section CD 34 is repealed.

7 **New section CD 34B inserted**

Before section CD 35, the following is inserted:

“CD 34B Distributions to members of co-operative companies

“What this section applies to

- “(1) This section applies to distributions by a co-operative company, or by a company (a **subsidiary**) in which the co-operative company has a voting interest of 100%, if the distributions are made after the Commissioner has received, from the co-operative company, an irrevocable election in writing to apply this section. 5 10

“General rule: co-operative company distributions not dividends

- “(2) If the requirements in **subsection (4)** are met, a distribution by a co-operative company, or by a subsidiary, to a member of the co-operative company is not a dividend, to the extent to which the distribution is for their— 15

“(a) transaction shares:

“(b) projected transactions shareholding:

“(c) limited non-transaction shares.

“Exception: distributions for excess shareholdings 20

- “(3) **Subsection (2)(c)** is ignored,—

“(a) for a distribution to a member, if the member holds shares in the co-operative company that—

“(i) are not transaction shares, are not their projected transactions shareholding, and are not limited non-transaction shares; and 25

“(ii) may entitle members to enter trading transactions:

“(b) for all distributions to all members, if the constitution of the co-operative company permits any member to hold shares that— 30

“(i) are not transaction shares, are not their projected transaction shareholding, and are not limited non-transaction shares; and

“(ii) may entitle members to enter trading transactions. 35

“Requirements

- “(4) For the purposes of **subsection (2)**, the requirements are—

Part 2 cl 7	Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill	
“(a) the co-operative company is resident in New Zealand for the period to which the distribution relates; and		
“(b) the company making the distribution is resident in New Zealand for the period to which the distribution relates; and		5
“(c) the co-operative company believes on reasonable grounds that the member at the time of the distribution—		
“(i) is resident in New Zealand:		
“(ii) has a fixed establishment in New Zealand.		10
<i>“Meaning of transaction shares</i>		
“(5) In this section, transaction shares means the number of shares in the co-operative company that the member holds for trading transactions that occurred in the period to which the distribution relates. The number of shares must determine the value of the trading transactions.		15
<i>“Meaning of limited non-transaction shares</i>		
“(6) In this section, limited non-transaction shares means the member’s shares that are not the member’s transaction shares or their projected transactions shareholding, and that may entitle the member to enter trading transactions, if the number of those shares is less than or equal to the greater of the following:		20
“(a) 20% of the member’s transaction shares on the date of entitlement for the distribution under section 125 of the Companies Act 1993:		25
“(b) 20% of the member’s projected transactions shareholding on the date of entitlement for the distribution under section 125 of that Act.		
<i>“Meaning of projected transactions shareholding</i>		30
“(7) In this section, projected transactions shareholding means the number of shares in the co-operative company that the member would have had to hold if the trading transactions actually had occurred that the member had projected, using reasonable assumptions, would occur in the period to which the distribution relates. The number of shares must determine the value of the trading transactions.		35

“Meaning of trading transactions

“(8) In this section, **trading transactions** means transactions between the member and the co-operative company or subsidiary that are—

- “(a) the sale and purchase of trading stock of the vendor that is not intangible property; and
- “(b) not subject to section CB 2 (Amounts received on disposal of business assets that include trading stock).

“Companies Act 1993

“(9) The 20 working day rule for fixing a date in section 125(2) of the Companies Act 1993 does not apply to members’ entitlements to receive distributions that are for transaction shares, projected transaction shareholdings, limited non-transaction shares, or shares described in **subsection (3)**, if—

- “(a) the co-operative company or the subsidiary, as the case may be, has given a copy of the irrevocable election described in **subsection (1)** to the Registrar of Companies before the relevant distributions are paid; and
- “(b) for the purposes of section 125(1) of the Companies Act 1993, the co-operative company or the subsidiary, as the case may be, fixes a date in relation to members’ entitlements to receive distributions before the entitlements arises, and that date is within the year or period to which the distributions relate.

“Defined in this Act: company, co-operative company, dividend, limited non-transaction shares, projected transaction shareholding, resident in New Zealand, trading transactions, transaction shares”.

8 New section CW 29B inserted

After section CW 29, the following is inserted:

“**CW 29B Amounts from Australian complying superannuation schemes reinvested in KiwiSaver schemes** 30

An amount of income derived in an income year by a natural person from an Australian complying superannuation scheme is exempt income if, in the income year, it is contributed to a KiwiSaver scheme. 35

“Defined in this Act: amount, Australian complying superannuation scheme, exempt income, income, income year, KiwiSaver scheme”.

9 Non-resident company involved in exploration and development activities

Section CW 57(1)(b) is replaced by the following:

“(b) ends on 31 December 2014.”

10 Acquisition of emissions units 5

Section DB 60(1), other than the heading, is replaced by the following:

“(1) This section applies when an emissions unit is transferred to a person for a price of zero—

“(a) under section 64, or Part 4, subpart 2, of the Climate Change Response Act 2002: 10

“(b) in relation to a forest sink covenant under section 67Y of the Forests Act 1949 entered by the person.”

11 Liabilities for emissions

Section DB 60B(1), other than the heading, is replaced by the following: 15

“(1) This section applies when a person incurs a liability—

“(a) under the Climate Change Response Act 2002 for emissions relating to post-1989 forest land or pre-1990 forest land: 20

“(b) to transfer emission units to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949 entered by the person.”

12 Distribution to member of co-operative company, excluded from being dividend 25

(1) In section DV 11(1), “section CD 34 (Distribution to member of co-operative company based on member’s transactions)” is replaced by “**CD 34B** (Distributions to members of co-operative companies)”.

(2) In section DV 11(2), “section CD 34” is replaced by “section **CD 34B**”.

13 Valuation of excepted financial arrangements

After section ED 1(5B)(b), the following is inserted:

“(bb) forest sink emissions units.”

14 Economic rate for plant, equipment, or building, with high residual value

- (1) Section EE 30(3)(b) is replaced by the following:
“(b) rounds the figure up or down to the nearest rate specified in schedule 11, column 1 (New banded rates of depreciation); and” 5
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

15 Determination alternatives

In section EW 15E(1)(c)(ii), “fair value method.” is replaced 10
by “fair value method; or” and the following is added:
“(iii) is treated under IFRSs by the person as a hedge
of something that is not a financial arrangement.”

16 Expected value method

In section EW 15F(1)(c)(ii), “fair value method; and” is re- 15
placed by “fair value method; or” and the following is added:
“(iii) is treated under IFRSs by the person as a hedge
of something that is not a financial arrangement;
and”.

17 Modified fair value method 20

In section EW 15G(1)(c)(ii), “fair value method; and” is re-
placed by “fair value method; or” and the following is added:
“(iii) is treated under IFRSs by the person as a hedge
of something that is not a financial arrangement;
and”.

 25

18 Meaning of controlled foreign company

- (1) Section EX 1(1)(b)(i) is replaced by the following:
“(i) the person’s control interest is less than a control
interest in the same category held by another per-
son; and” 30
- (2) **Subsection (1)**—
(a) applies for the 2008–09 and later income years, except
if **paragraph (b)** applies:

- (b) does not apply for a person and an income year after the 2007–08 income year in relation to a tax position for the income year taken by the person—
- (i) before 19 November 2009; and
 - (ii) relying on the provision amended by this section as it was immediately before the amendment made by this section. 5
- 19 Non-attributing active CFC: default test**
In section EX 21D(7), “item attributable” is replaced by “item attributable”. 10
- 20 Disposals of trading stock at below market value**
Section GC 1(4)(d) is replaced by the following:
- “(d) by the surrender of an emissions unit under the Climate Change Response Act 2002:
 - “(e) by the transfer of an emissions unit to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949.” 15
- 21 Trustees’ obligations**
- (1) Section HC 24(2)(a) is replaced by the following:
 - “(a) have a tax credit under subparts LC and LD (which relate to tax credits for natural persons and for certain gifts):” 20
 - (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 22 Treatment of portfolio class taxable loss and portfolio class land loss for tax year** 25
- (1) Section HL 32(3)(a)(i) is replaced by the following:
 - “(i) are an investment of the type listed in **subsection (4)**; and”
 - (2) After section HL 32(3), the following is added: 30
 - “*Investment types*
 - “(4) For the purposes of **subsection (3)(a)(i)**, the investment must be—
 - “(a) an investment in land:

- “(b) an investment in a portfolio land company that is resident in New Zealand:
“(c) an investment in a non-resident portfolio land company in which the portfolio investor class has a voting interest of more than 20%.” 5
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 23 Use of land losses of investor classes**
- (1) Section HM 65(3)(a) is replaced by the following:
“(a) are an investment of the type listed in **subsection (4)**; and” 10
- (2) After section HM 65(3), the following is added:
“*Investment types*
“(4) For the purposes of **subsection (3)(a)**, the investment must be— 15
“(a) an investment in land:
“(b) an investment in a land investment company that is resident in New Zealand:
“(c) an investment in a non-resident land investment company in which the investor class has a voting interest of more than 20%.” 20
- (3) **Subsections (1) and (2)** apply for the 2010–11 and later income years.
- 24 Transitional provisions for PIE rules**
- (1) In section HZ 5(3)(b), “section 292(2) of this Act” is replaced by “section 292(2) of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009”. 25
- (2) **Subsection (1)** applies for the 2010–11 and later income years.
- 25 Child’s income** 30
- (1) In section LC 3(1) in the words before paragraph (a), “a person” is replaced by “a person other than an absentee”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

26 Tax credits for housekeeping

- (1) In section LC 6(1) in the words before paragraph (a), “A person” is replaced by “A person, other than an absentee.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 5

27 Limitation on deductions

- (1) The formula in section LP 10(1) is replaced by the following:

$$\text{company's income} - \frac{\text{total credits + supplementary dividends}}{\text{tax rate.}}$$

- (2) In section LP 10(2),—
 - (a) in paragraph (b), “**company’s total credits**” is replaced by “**total credits**”; 10
 - (b) in paragraph (c), “**supplementary amount**” is replaced by “**supplementary dividends**”.
- (3) **Subsections (1) and (2)**—
 - (a) apply for the 2008–09 and later income years, except if **paragraph (b)** applies; 15
 - (b) does not apply for a person and an income year after the 2007–08 income year in relation to a tax position for the income year taken by the person—
 - (i) before 19 November 2009; and
 - (ii) relying on the provision amended by this section as it was immediately before the amendment made by this section. 20

28 ICA transfer from tax pooling account

- (1) Section OB 6(1), other than the heading, is replaced by the following: 25
- “(1) An ICA company has an imputation credit for an amount representing an entitlement to funds held in a tax pooling account if—
 - “(a) the company receives the entitlement from another person: 30
 - “(b) the intermediary transfers the funds from the tax pooling account to the company’s tax account with the Commissioner:

- “(c) the intermediary transfers the funds from the tax pooling account to the company.”
- (2) Section OB 6(3), other than the heading, is replaced by the following:
- “(3) The credit date is— 5
- “(a) if the company receives the entitlement from another person, the date on which the company receives the entitlement; or
- “(b) if the intermediary transfers the funds from the tax pooling account to the company’s tax account with the Commissioner, the effective date under sections RP 19 and RP 20 (which relate to transfers from the tax pooling account); or 10
- “(c) if the intermediary transfers the funds from the tax pooling account to the company, the date of the transfer.” 15
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 29 BETA payment of income tax**
- (1) Section OE 7(1)(c)(ii) and (iii) are replaced by the following:
- “(ii) by reducing a tax loss.” 20
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 30 New heading and section OE 11B inserted**
- (1) After section OE 11, the following is inserted:
- “*Credit if debit balance including debits from conduit relief* 25
- “**OE 11B Company with debit balance, including debits from conduit relief, at beginning of first affected income year**
- “*When this section applies*
- “(1) This section applies when a BETA company has, at the beginning of the first income year for which this section applies to the company,— 30
- “(a) a debit balance in its branch equivalent tax account; and
- “(b) debits in the branch equivalent tax account that arose under section OE 12. 35

- “Credit*
- “(2) A branch equivalent tax credit arises in the branch equivalent tax account at the beginning of the income year of an amount equal to the total of the debits that—
- “(a) arose under section OE 12; and 5
- “(b) are in the branch equivalent tax account at the beginning of the income year.”
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 31 Payment dates for terminal tax 10**
- (1) In section RA 13(2)(a)(i), “subsection (3)” is replaced by “subsection (4)”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 32 Definitions 15**
- (1) This section amends section YA 1.
- (2) After the definition of **Australian approved deposit fund**, the following is inserted:
- “Australian complying superannuation scheme** means an entity that is a complying superannuation fund for the purposes of Division 2 of the Superannuation Industry (Supervision) Act 1993 (Aust) and that is regulated by the Australian Prudential Regulation Authority” 20
- (3) In the definition of **charitable or other public benefit gift**, 25
“for the purposes of sections LD 1 to LD 3 (which relate to tax credits for charitable or other public benefit gifts)” is omitted.
- (4) The definition of **forest land emissions unit** is replaced by the following:
- “forest land emissions unit** means a pre-1990 forest land emissions unit, a post-1989 forest land emissions unit, or a 30
forest sink emissions unit
- “forest sink emissions unit** means an emissions unit issued to a person in relation to a forest sink covenant under section 67Y of the Forests Act 1949 entered by the person”.
- (5) After the definition of **limited attribution company**, the following is inserted: 35

- “**limited non-transaction shares** is defined in **section CD 34B** (Distributions to members of co-operative companies)”.
- (6) In the definition of **member credit contribution**, after paragraph (a)(iii), the following is added: 5
- “(iv) a superannuation contribution that was transferred from an Australian complying superannuation scheme and contributed to a KiwiSaver scheme:”.
- (7) In the definition of **non-Kyoto greenhouse gas unit**, in paragraph (a), “human induced” is replaced by “human-induced”. 10
- (8) After the definition of **profit-sharing arrangement**, the following is inserted: 15
- “**projected transactions shareholding** is defined in **section CD 34B** (Distributions to members of co-operative companies)”.
- (9) In the definition of **replacement forest land emissions unit**,—
- (a) paragraph (a) is replaced by the following: 20
- “(a) the person has previously disposed of a post-1989 forest land emissions unit or forest sink emissions unit other than by—
- “(i) surrender under the Climate Change Response Act 2002: 25
- “(ii) transfer to the Crown under a forest sink covenant under section 67Y of the Forests Act 1949; and”:
- (b) in paragraph (b), “post-1989 forest land emissions unit” is replaced by “post-1989 forest land emissions unit or forest sink emissions unit”.
- (10) In the definition of **revenue account property**, in paragraph (b), “property that would produce income for the person if they disposed of it” is replaced by “property for which an amount derived by the person from its disposal would be income”. 30
- (11) In the definition of **revenue account property**, in paragraph (b), “if disposed of” is replaced by “if disposed of for valuable consideration”. 35
- (12) After the definition of **trading stock**, the following is inserted:

- “**trading transactions** is defined in **section CD 34B** (Distributions to members of co-operative companies)
“**transaction shares** is defined in **section CD 34B** (Distributions to members of co-operative companies)”.
- (13) **Subsection (10)** applies for the 2008–09 and later income 5
years.
- 33 General rules for currency conversion**
- (1) After section YF 1(3), the following is added:
“*Conversion rates and calculation methods approved by
Commissioner* 10
- “(5) Despite subsection (2), the amount may be converted into New Zealand currency by applying a rate—
“(a) approved by the Commissioner for use in the circumstances of the person:
“(b) calculated using a method approved by the Commissioner for use in the circumstances of the person.” 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 34 Schedule 32—Recipients of charitable or other public benefit gifts 20**
- (1) In schedule 32, “Cure Kids” is inserted before the entry for “Cyclone Ofa Relief Fund”.
(2) **Subsection (1)** applies for the 2010–11 and later tax years.
- Part 3**
- Amendments to Tax Administration Act 1994 25**
- 35 Tax Administration Act 1994**
Sections 36 to 70 amend the Tax Administration Act 1994.
- 36 Interpretation**
- (1) This section amends section 3(1) of the Tax Administration Act 1994. 30

- (2) After the definition of **Commissioner-set instalment date**, the following is inserted:
“**Commissioner’s official opinion**—
“(a) means, for a taxpayer, an opinion of the Commissioner concerning the tax affairs of the taxpayer, given by the Commissioner, either orally or in writing, after all information relevant to forming the opinion has been provided to the Commissioner, and that information is correct: 5
“(b) does not include a private binding ruling”. 10
- (3) After the definition of **proceedings**, the following is inserted:
“**promoter** is defined in **section 141EC**”.
- (4) After the definition of **proposed adjustment**, the following is inserted:
“**proscribed question** means— 15
“(a) whether a fact is correct or exists:
“(b) what is a person’s purpose or intention, for the purpose of any provision of the Income Tax Act 2007 that expressly refers to a person’s purpose or intention:
“(c) what is the value of a thing: 20
“(d) what is commercially acceptable practice, for the purposes of any provision of that Act that expressly refers to commercially acceptable practice”.
- 37 Exemption certificates for schedular payments**
- (1) Section 24M(5) is replaced by the following: 25
“(5) A person must not alter an exemption certificate.
“(6) A person must not use an exemption certificate that is not in force, or has been altered, to cause a person to refrain from withholding an amount of tax from a schedular payment.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 30
- 38 Special tax rate certificates for schedular payments**
- (1) Section 24N(5) is replaced by the following:
“(5) A person must not alter a special tax rate certificate.

- “(6) A person must not use a special tax rate certificate that is not in force, or has been altered, to cause a person to refrain from withholding an amount of tax from a schedular payment.”
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 5
- 39 Returns by persons with tax credits for housekeeping payments and charitable or other public benefit gifts**
- (1) In section 41A(5)(a), “section LC 7” is replaced by “section LC 6”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 10
- 40 Determinations in relation to financial arrangements**
In section 90(7),—
- (a) “in the *Gazette*” is omitted:
- (b) “determination or notice,” is replaced by “determination or notice, in a publication chosen by the Commissioner and”. 15
- 41 Notification of determinations and notices**
In section 90AD(1),—
- (a) “in the *Gazette*” is omitted: 20
- (b) “determination or notice is made” is replaced by “determination or notice is made, in a publication chosen by the Commissioner”.
- 42 Determinations in relation to apportionment of interest costs** 25
In section 90A(7),—
- (a) “in the *Gazette*” is omitted:
- (b) “determination or notice,” is replaced by “determination or notice, in a publication chosen by the Commissioner and”. 30
- 43 Determinations in relation to standard-cost household service**
In section 91AA(6),—

- (a) “in the *Gazette*” is omitted:
 (b) “making of the determination” is replaced by “making of the determination, in a publication chosen by the Commissioner”.
- 44 Determinations relating to types and diminishing values of listed horticultural plants** 5
 In section 91AAB(6), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.
- 45 Publication and revocation of determinations relating to livestock** 10
 (1) In section 91AAE(1),—
 (a) “in the *Gazette*” is omitted:
 (b) “the Commissioner” is replaced by “the Commissioner, in a publication chosen by the Commissioner”.
 (2) In section 91AAE(2), “in the *Gazette*” is omitted. 15
- 46 Commissioner may decline to issue special rate or provisional rate**
 (1) Section 91AAH(2)(a) is replaced by the following:
 “(a) the difference between the economic rate already applicable to the item and an appropriate special rate would be less than 50% of the difference between the already applicable economic rate and the next higher or lower rate, as applicable, in— 20
 “(i) schedule 11 of the Income Tax Act 2007, if the item is acquired on or after 1 April 2005; or 25
 “(ii) schedule 12 of that Act, if the item is acquired before 1 April 2005; or”.
- (2) Section 91AAH(3)(ab) is replaced by the following:
 “(ab) if a default rate applies to the item, the difference between the default rate and the provisional rate would be less than 50% of the difference between the default rate and the next higher or lower rate, as applicable, in— 30
 “(i) schedule 11 of the Income Tax Act 2007, if the item is acquired on or after 1 April 2005; or

- “(ii) schedule 12 of that Act, if the item is acquired before 1 April 2005; or”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.
- 47 Applications for determinations** 5
In section 91AAM(4), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.
- 48 Determinations on rates for diminishing value of environmental expenditure** 10
In section 91AAN(9), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.
- 49 Determination on type of interest in FIF and use of fair dividend rate method**
In section 91AAO(5)(a),— 15
(a) “in the *Gazette*” is omitted:
(b) “date of the determination” is replaced by “date of the determination, in a publication chosen by the Commissioner”.
- 50 Content and notification of a public ruling** 20
In section 91DA(2), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.
- 51 Withdrawal of a public ruling**
In section 91DE(2), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.
- 52 Commissioner to make private rulings on request** 25
(1) In section 91E(3)(b) “matter on which the ruling is sought is” is replaced by “arrangement on which the ruling is sought, or a separately identifiable part of that arrangement, is substantially the same as an arrangement which is”.
(2) In section 91E(4)(a), “questions of fact” is replaced by “a proscribed question”. 30
(3) Section 91E(4)(ga) is replaced by the following:

- “(ga) the application is for a ruling in respect of a tax type or a separately identifiable issue, for an arrangement, that is the subject of a notice of proposed adjustment for the arrangement; or”.
- (4) In section 91E(4)(j), “or to form an opinion as to a commercially acceptable practice” is omitted. 5
- (5) **Subsection (3)** applies if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which this Act receives the Royal assent.
- 53 Effect of a private ruling** 10
- (1) In section 91EA(1)(a), “an arrangement” is replaced by “an arrangement and a tax type for an arrangement”.
- (2) In section 91EA(1)(b), “taxation law” is replaced by “taxation law for the tax type”.
- (3) In section 91EA(1), in the words after the paragraphs, “the person and the arrangement” is replaced by “the person, the tax type, and the arrangement”. 15
- (4) **Subsections (1) to (3)** apply if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which this Act receives the Royal assent. 20
- 54 Application of a private ruling**
- (1) In section 91EB(1), in the words before the paragraphs, “taxation law” is replaced by “taxation law for a tax type”.
- (2) In section 91EB(2), in the words before the paragraphs “an arrangement if” is replaced by “a tax type for an arrangement, to the extent to which, in relation to the tax type”. 25
- (3) **Subsections (1) and (2)** apply if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which this Act receives the Royal assent.
- 55 Assumptions in making a private ruling** 30
- After section 91EF(2), the following is added:
- “(3) The Commissioner may make assumptions about the answer to a proscribed question, and making those assumptions is treated as not determining the proscribed question for the purposes of **section 91E(4)(a)**.” 35

56 Content and notification of a private ruling

After section 91EH(1), the following is inserted:

- “(1B) The Commissioner may stipulate conditions about the answer to a proscribed question, and stipulating those conditions is treated as not determining the proscribed question for the purposes of **section 91E(4)(a)**.” 5

57 New section 91EJ inserted

After section 91EI, the following is inserted:

“91EJ Treatment of information

- “(1) Information supplied to the Commissioner by the applicant for a private ruling is the factual basis on which the Commissioner makes a private ruling. 10
- “(2) Despite **subsection (1)**, the Commissioner,—
- “(a) as part of the process of making a private ruling, may, but does not have to, inquire into the correctness or existence of the facts contained in the information supplied before making the private ruling: 15
- “(b) is not stopped by the process of making the private ruling or by the use of the information as the basis of the private ruling from inquiring, outside the process of making the ruling or subsequent to making the ruling, into the correctness or existence of the facts contained in the information supplied.” 20

58 Commissioner may make product rulings

- (1) Section 91F(3)(b) is replaced by the following: 25
- “(b) the arrangement on which the ruling is sought, or a separately identifiable part of that arrangement, is substantially the same as an arrangement which is subject to an objection, challenge, or appeal, whether in relation to the applicant or any other person; or 30
- “(bb) the applicant is a promoter who, in the Commissioner’s opinion, did not comply with section 91FD in relation to an earlier binding ruling application; or”.
- (2) In section 91F(4)(a), “questions of fact” is replaced by “a proscribed question”. 35

- (3) In section 91F(4)(h), “or to form an opinion as to a commercially acceptable practice” is omitted.

59 Effect of a product ruling

- (1) In section 91FA(1)(a), “an arrangement” is replaced by “an arrangement and a tax type for an arrangement”. 5
- (2) In section 91FA(1)(b), “taxation law” is replaced by “taxation law for the tax type”.
- (3) In section 91FA(1), in the words after the paragraphs, “the arrangement” is replaced by “the person, the tax type, and the arrangement”. 10
- (4) **Subsections (1) to (3)** apply if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which this Act receives the Royal assent.

60 Application of a product ruling

- (1) In section 91FB(1), in the words before the paragraphs, “taxation law” is replaced by “taxation law for a tax type”. 15
- (2) In section 91FB(2), in the words before the paragraphs “an arrangement if” is replaced by “a tax type for an arrangement, to the extent to which, in relation to the tax type”.
- (3) **Subsections (1) and (2)** apply if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which this Act receives the Royal assent. 20

61 Applying for a product ruling

In section 91FC(1A), “proposed arrangement” is replaced by “proposed arrangement or a promoter of the proposed arrangement”. 25

62 Disclosure requirements

After section 91FD(1)(b), the following is inserted:

“(bb) if the person making the application is the promoter of the arrangement, make a statutory declaration that paragraph (b) has been complied with and that all relevant facts are correct.” 30

63 Assumptions in making a product ruling

After section 91FF(2), the following is added:

- “(3) The Commissioner may make assumptions about the answer to a proscribed question, and making those assumptions is treated as not determining the proscribed question for the purposes of **section 91F(4)(a)**.” 5

64 Content and notification of a product ruling

- (1) After section 91FH(1), the following is inserted:

“(1B) The Commissioner may stipulate conditions about the answer to a proscribed question, and stipulating those conditions is treated as not determining the proscribed question for the purposes of **section 91F(4)(a)**.” 10

- (2) In section 91FH(4)(a), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.

- (3) In section 91FH(5)(a), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”. 15

- (4) **Subsections (2) and (3)** apply if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which this Act receives the Royal assent.

65 Withdrawal of a product ruling 20

In section 91FJ(2), “the *Gazette*” is replaced by “a publication chosen by the Commissioner”.

66 New section 91FK inserted

After section 91FJ, the following is inserted:

“**91FK Treatment of information** 25

- “(1) Information supplied to the Commissioner by the applicant for a product ruling is the basis on which the Commissioner makes a product ruling.

- “(2) Despite **subsection (1)**, the Commissioner,—

“(a) as part of the process of making a product ruling, may, but does not have to, inquire into the existence or correctness of facts contained in the information supplied before making the product ruling: 30

“(b) is not stopped by the process of making the product ruling or by the use of the information as the basis of 35

the product ruling from inquiring, outside the process of making the ruling or subsequent to making the ruling, into the existence or correctness of facts contained in the information supplied.”

- 67 Application of Part** 5
After section 120AA(2), the following is added:
- “(3) This Part does not apply to a person who takes a tax position relying on advice given to them as a taxpayer by the Commissioner. For the purposes of this subsection, the advice must—
- “(a) be provided in writing by the Commissioner; and 10
 - “(b) be given as official departmental advice; and
 - “(c) apply specifically to the taxpayer.
- “(4) Despite **subsection (3)(a)**, the advice is not required to be in writing if the advice is standard in nature and is given in relation to a common tax issue.” 15
- 68 New section 120W inserted**
After section 120V, the following is inserted:
- “120W Commissioner’s official opinions**
- “(1) A taxpayer that, but for this section, is liable to pay interest on unpaid tax to the Commissioner, is not liable to pay that interest to the extent to which it arises solely because they relied on a Commissioner’s official opinion. 20
- “(2) **Subsection (1)** applies if the relevant Commissioner’s official opinion was given by the Commissioner on or after the day on which the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act **2009** receives the Royal assent.” 25
- 69 Unacceptable tax position**
- (1) After section 141B(1C), the following is inserted:
- “(1D) A taxpayer does not take an unacceptable tax position to the extent to which they have taken their position solely because they have relied on a Commissioner’s official opinion.” 30
- (2) **Subsection (1)** applies if the relevant Commissioner’s official opinion was given by the Commissioner on or after the day on which this Act receives the Royal assent. 35

70 Definition of promoter

In section 141EC(1), “section 141EB” is replaced by “sections 91FC, 91FD, and 141EB”.

Part 4
Amendments to KiwiSaver Act 2006 5

71 KiwiSaver Act 2006

Sections 72 to 80 amend the KiwiSaver Act 2006.

72 Interpretation

(1) In section 4, after the definition of **address**, the following is inserted: 10

“**Australian complying superannuation scheme** means an entity that is a complying superannuation fund for the purposes of Division 2 of the Superannuation Industry (Supervision) Act 1993 (Aust) and that is regulated by the Australian Prudential Regulation Authority”. 15

(2) In section 4, after the definition of **gross salary or wages**, the following is inserted:

“**guardian** has the same meaning as in the Care of Children Act 2004”.

(3) In section 4, in the definition of **member’s accumulation**, after paragraph (a), the following is inserted: 20

“(ab) an amount that was transferred from an Australian complying superannuation scheme and contributed to a KiwiSaver scheme; and”.

73 How to opt in 25

(1) In the heading to section 34, “**How to opt in**” is replaced by “**Opting in by person 18 years or more**”.

(2) In section 34(1), in the words before the paragraphs, “A person who” is replaced by “A person who is 18 years or more and who”. 30

74 Opting in by persons under 18

Section 35, other than the heading, is replaced by the following:

- “(1) A person who is less than 18 years may only opt in in accordance with this section. 5
- “(2) A person who is less than 16 years may opt in if their guardian contracts directly with a provider, in the name of the person. If the provider accepts the person, then the person is treated as—
- “(a) contracting directly with the provider; and
 - “(b) 18 years for the purposes of the Minor’s Contracts Act 1969; and 10
 - “(c) opting in under section 34(1)(a).
- “(3) A person who is 16 or 17 years old with a guardian may opt in if the person and their guardian jointly contract directly with a provider, in the name of the person. If the provider accepts the person, then the person is treated as— 15
- “(a) contracting directly with the provider; and
 - “(b) 18 years for the purposes of the Minors’ Contracts Act 1969; and
 - “(c) opting in under section 34(1)(a). 20
- “(4) A person who is 16 or 17 years old with no guardian may opt in if the person contracts directly with a provider. If the provider accepts the person, then the person is treated as—
- “(a) 18 years for the purposes of the Minors’ Contracts Act 1969: 25
 - “(b) opting in under section 34(1)(a).”

75 Initial back-dated validation

In section 59B(2)(b)(iii), “the member’s accumulation” is replaced by “an amount of the member’s accumulation, less the net value of the amount that was transferred from an Australian complying superannuation scheme”. 30

76 What happens when initial back-dated validation ends, with no confirmed back-dated validation?

- (1) Section 59D(2)(b) is replaced by the following:
- “(b) pay the amount of the member’s accumulation, less the net value of the amount that was transferred from an 35

- Australian complying superannuation scheme, for the person to the Commissioner, if the provider has not already done so; and
- “(c) pay the net value of the amount that was transferred from an Australian complying superannuation scheme to that scheme.” 5
- (2) In section 59D(3)(a), in the words before the subparagraphs, “the Commissioner” is replaced by “the Commissioner, but ignoring those transferred from an Australian complying superannuation scheme”. 10
- 77 PAYE rules apply to deductions**
In section 67(3)(a), “to RD 11” is replaced by “, RD 10”.
- 78 Application of other provisions of Superannuation Schemes Act 1989**
After section 122(5)(a), the following is inserted: 15
“(ab) the requirement in section 17(1)(a) is treated as met in respect of a member, if—
“(i) the member has consented, in writing, to receive a world wide web uniform resource locator for access to an electronic copy of the annual report (the **annual report URL**); and 20
“(ii) the provider gives the annual report URL to the member within 6 months of the close of the relevant financial year; and”.
- 79 Regulations relating to mortgage diversion facility** 25
After section 229(2)(j), the following is inserted:
“(jb) an amount that was transferred from an Australian complying superannuation scheme may not be diverted.”.
- 80 Schedule 1—KiwiSaver scheme rules**
(1) After schedule 1, clause 2, the following is inserted: 30

“**2B Fees from amounts not transferred from Australian
complying superannuation schemes**

Fees are deducted first from the net value of amounts that were
not transferred from an Australian complying superannuation
scheme.”

5

(2) After schedule 1, clause 4, the following is inserted:

“**4B Amounts from Australian complying superannuation
schemes**

A member may withdraw the amount that was transferred from
an Australian complying superannuation scheme (disregard-
ing any positive or negative returns for the purpose of calcul-
ating that amount), if the member is 60 years or more and
the member’s retirement (as that term is defined in regulation
6.01(7) of the Superannuation Industry (Supervision) Regula-
tions 1994 (Aust), with necessary modification for KiwiSaver
scheme trustees) is taken to have occurred.”

10

15

(3) Schedule 1, clause 8(4) is replaced by the following:

“(4) A member may not make a withdrawal under this clause of
more than an amount equal to the member’s accumulation, at
the time of the withdrawal, less the total of the following 2
amounts:

20

“(a) the amount of the Crown contribution (disregarding any
positive or negative returns for the purpose of calculat-
ing the amount of the Crown contribution):

“(b) the amount that was transferred from an Australian
complying superannuation scheme (disregarding any
positive or negative returns for the purpose of calculat-
ing that amount).”

25

(4) In schedule 1, clause 8(6), “, a leasehold estate,” is omitted.

(5) In schedule 1, clause 14(1) and (2) are replaced by the follow-
ing:

30

“(1) Subject to **clause 14B**, a member may, on application to the
trustees, and no earlier than 1 year after the member’s perman-
ent emigration from New Zealand, withdraw an amount equal
to the member’s accumulation, at the time of the withdrawal,
less the total of the following 2 amounts:

35

“(a) the amount of the Crown contribution arising from a
tax credit under section MK 1 of the Income Tax Act

- 2007 (disregarding any positive or negative returns for the purpose of calculating the amount of the Crown contribution):
- “(b) the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount).” 5
- “(2) Subject to **clause 14B**, a member may, on application to the trustees, at any time after the member’s permanent emigration from New Zealand, have the trustees transfer to a foreign superannuation scheme authorised for that purpose under regulations made under section 228 the member’s accumulation, less the total of the following 2 amounts: 10
- “(a) the amount of the Crown contribution arising from a tax credit under section MK 1 of the Income Tax Act 2007 (disregarding any positive or negative returns for the purpose of calculating the amount of the Crown contribution): 15
- “(b) the amount that was transferred from an Australian complying superannuation scheme (disregarding any positive or negative returns for the purpose of calculating that amount).” 20
- (6) After schedule 1, clause 14, the following is inserted:
- “14B Exceptions to clause 14 for Australian permanent emigration” 25**
- “(1) For a Kiwisaver scheme (but not for a complying superannuation fund) a member may not withdraw any amount, or have the trustees transfer any amount, after the member’s permanent emigration to Australia, except as provided by this clause. 30
- “(2) At any time after the member’s permanent emigration to Australia, a member may, on application to the trustees, have the trustees transfer the member’s accumulation to an Australian complying superannuation scheme. 30
- “(3) As soon as practicable after receiving a satisfactory application, the trustees must transfer the whole of the member’s accumulation to the relevant Australian complying superannuation scheme and provide that scheme with any necessary information it reasonably requires. 35

- “(4) An application under **subclause (2)** must be in the form required by the trustees and must include—
- “(a) a completed statutory declaration in respect of the member to the effect that the member has permanently emigrated to Australia; and 5
 - “(b) proof to the satisfaction of the trustees—
 - “(i) of the member’s departure from New Zealand (*see*, for examples of proof: clause 14(3)(b)(i)); and
 - “(ii) that the member has resided at an Australian address at some time following the member’s departure from New Zealand. 10
- “(5) The trustees may require that any other documents, things, or information produced in an application under **subclause (2)** be verified by oath, statutory declaration, or otherwise.” 15

Part 5 Amendments to other Acts and regulations

Goods and Services Tax Act 1985

- 81 Goods and services tax incurred in making certain supplies of financial services 20**
- (1) In the Goods and Services Tax Act 1985, in section 20C, the definition of item c is replaced by the following:
- “c is the total value of exempt supplies of financial services by the registered person in respect of the taxable period.”. 25
- (2) **Subsection (1)** applies for taxable periods beginning on or after 1 January 2005.

Estate and Gift Duties Act 1968

82 Exemption for gifts to charities and certain bodies

- (1) This section amends the Estate and Gift Duties Act 1968.
- (2) Before section 73(2)(a), the following is inserted:
- “(aa) any gift required by an order of a court under the Law 5
Reform (Testamentary Promises) Act 1949 or the Fam-
ily Protection Act 1955:”.
- (3) After section 73(2)(jc), the following is inserted:
- “(jd) any gift to an organisation that is—
- “(i) part of the State Services as defined in section 2 10
of the State Sector Act 1988; and
- “(ii) not an educational institution; and
- “(iii) not carried on for the private pecuniary profit of
any individual:”.
- (4) After section 73(2)(ka), the following is inserted: 15
- “(kb) any gift to an organisation that is a local authority, or a
council-controlled organisation or subsidiary of a coun-
cil-controlled organisation, as defined in section YA 1 of
the Income Tax Act 2007 and is not carried on for the
private pecuniary profit of any individual:”.
- (5) In section 73(2)(n), “that trust.” is replaced by “that trust:” and
the following is added:
- “(o) any gift to an organisation that is a donee organisation
as defined in section YA 1 of the Income Tax Act 2007.”
- (6) **Subsection (2)** applies for gifts made on or after 24 May 25
1999.

Income Tax Act 2004

83 Determination alternatives to IFRS

- (1) In the Income Tax Act 2004, in section EW 15D(1)(d)(ii), “fair
value method.” is replaced by “fair value method; or” and the 30
following is added:
- “(iii) is treated under IFRSs by the person as a hedge
of something that is not a financial arrangement.”
- (2) **Subsection (1)** applies for—
- (a) the 2007–08 and later income years, unless **paragraph** 35
(b) or (c) applies; or

- (b) the first income year for which the person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; 5
or
- (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007. 10

84 Expected value method and equity-free fair value method

- (1) In the Income Tax Act 2004, in section EW 15E(1)(c)(ii), “fair value method; and” is replaced by “fair value method; or” and the following is added:

“(iii) is treated under IFRSs by the person as a hedge of something that is not a financial arrangement; and”.

- (2) **Subsection (1)** applies for—

- (a) the 2007–08 and later income years, unless **paragraph (b) or (c)** applies; or 20
- (b) the first income year for which the person adopts IFRSs for the purposes of financial reporting and later income years, if that first income year is before the 2007–08 income year and the person chooses to apply the IFRS taxpayer method in a return of income for that first year; 25
or
- (c) the 2008–09 and later income years, if a person’s 2008–09 income year starts before 1 January 2008 and the person has not adopted IFRSs for the purposes of financial reporting before 1 January 2007. 30

85 Meaning of CFC

- (1) In the Income Tax Act 2004, section EX 1(1)(b)(i) is replaced by the following:

“(i) the person’s control interest is less than a control interest in the same category held by another person; and”.

- (2) **Subsection (1)**—
- (a) applies for the 2005–06 and later income years, except if **paragraph (b)** applies:
 - (b) does not apply for a person and an income year after the 2005–06 income year in relation to a tax position for the income year taken by the person—
 - (i) before 19 November 2009; and
 - (ii) relying on the provision amended by this section as it was immediately before the amendment made by this section.

86 Definitions

- (1) In section OB 1 of the Income Tax Act 2004, in the definition of **revenue account property**, in paragraph (b), “property that would produce income for the person if they disposed of it” is replaced by “property for which an amount derived by the person from its disposal would be income”.
- (2) In section OB 1 of the Income Tax Act 2004, in the definition of **fair value method**, “15B” is replaced by “15C”.
- (3) **Subsection (1)** applies for the 2005–06 and later income years.

Local Government Act 2002

87 Schedule 9—Council-controlled organisations and transfer of undertakings

- (1) In the Local Government Act 2002, schedule 9, clause 6(3), “sections EG 17(1)” is replaced by “sections EE 33(1) to (3)”.
- (2) In the Local Government Act 2002, schedule 9, clause 6(3), “sections EE 33(1) to (3)” is replaced by “sections EE 40(1) to (3)”.
- (3) **Subsection (1)** applies for the 2005–06 and later income years.
- (4) **Subsection (2)** applies for the 2008–09 and later income years.

*Tax Administration (Binding Rulings)
Regulations 1999*

- 88 Waiver of fees**
In the Tax Administration (Binding Rulings) Regulations 1999, regulation 6 is replaced by the following: 5
- “6 Waiver of fees**
- “(1) The Commissioner may waive all or part of a fee payable under these regulations if the Commissioner considers it is fair and reasonable in the circumstances to do so, having regard to the nature of the issue that is the subject of the application, the level of skill and experience required in the consideration of the application, and any other relevant factors. 10
- “(2) **Subclause (1)** applies if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act **2009** receives the Royal assent.” 15
- 89 Fees inclusive of goods and services tax**
In the Tax Administration (Binding Rulings) Regulations 1999, regulation 7 is replaced by the following: 20
- “7 Goods and services tax**
- “(1) The fees prescribed by these regulations include goods and services tax. However, for a supply that is zero-rated under the Goods and Services Tax Act 1985, the amount of a fee prescribed by these regulations is reduced by an amount equal to the tax fraction of the fee under that Act. 25
- “(2) **Subclause (1)** applies if a person’s application for the relevant binding ruling was received by the Commissioner on or after the day on which the Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Act **2009** receives the Royal assent.” 30
-