

# **Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill**

Government Bill

As reported from the Finance and  
Expenditure Committee

## **Commentary**

### **Recommendation**

The Finance and Expenditure Committee has examined the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill, and recommends that it be passed with the amendments shown.

### **Introduction**

The Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill seeks to make amendments to various Acts, including the Income Tax Act 2007, the Tax Administration Act 1994, the Goods and Services Act 1985, and the KiwiSaver Act 2006. The bill would set the annual rates of income tax for the 2012–13 tax year, and effect the following principal changes:

- simpler filing requirements for individuals and record-keeping requirements for businesses
- requiring taxpayers who choose to file a tax return also to file returns for the previous four tax years

- removing the requirement for taxpayers to file a return merely because of their Working for Families entitlements
- increasing the KiwiSaver employer, default, and minimum employee contribution rates from 2 to 3 percent, as announced in Budget 2011
- allowing the capital costs of unsuccessful software development to be tax-deductible
- increasing the minimum tax equity requirement for foreign-owned banks from 4 to 6 percent, as announced in Budget 2011
- taxing bonus shares issued by companies under profit distribution plans
- clarifying that late payment fees charged by businesses, and the credit card service fee for tax and social service payments, are subject to GST
- changing the GST rules for the sale of second-hand goods by a non-resident, so that input credits cannot be claimed twice
- preventing liquidators and receivers from switching the basis on which they account for clients' GST obligations
- conferring charitable donee status on four overseas-focused charities.

The bill also proposes various remedial amendments to ensure that legislation operates correctly and is consistent with the original policy intent, including the following:

- amending the portfolio investment entity (PIE) rules to ensure they are applied correctly
- ensuring that the rules introduced in 2011 for look-through companies are consistent with the policy intent
- clarifying the loss limitation rules for limited partnerships
- clarifying the definition of "hire purchase agreement"
- repealing an exemption to foreign investment fund rules, and providing an optional method of valuing certain shareholdings under the rules
- introducing new rules for the transfer of emissions units by public bodies in certain circumstances.

This commentary discusses the more significant amendments we recommend to the bill. It does not discuss technical or inconsequential amendments. For example, although new clauses 16B and 16C ap-

pear substantial, their effect is minor and we propose their insertion for purely technical and drafting reasons.

We are recommending amendments which would make some provisions apply retrospectively. We consider that taxpayers would not be adversely affected by these amendments, and that the amendments would not be unexpected by those affected, as they would effect minor clarifications which reflect the policy intent of the original legislation to which they relate.

### **Supplementary Order Paper**

The Minister of Revenue released Supplementary Order Paper 1 to the bill on 7 February 2012. The SOP proposes two sets of amendments to the Income Tax Act 2007. The first consists of technical amendments to correct anomalies in the loss-limitation rules for look-through companies and limited partnerships. The other involves a remedial amendment to the shareholder continuity rules, which are used to determine whether a company is entitled to carry forward losses and tax credits. Both sets of amendments are consistent with the Act's original policy intent.

The Minister wrote to the committee on 3 February 2012 inviting us to include the SOP in our consideration of the bill. We have done so, and are recommending that the substance of the amendments proposed in the SOP be incorporated into the bill.

### **Filing requirements for individuals**

The bill contains various amendments designed to simplify the return-filing requirements for individuals regarding income tax and Working for Families tax credits. The aim is to reduce compliance costs for taxpayers and make Inland Revenue more efficient by moving from paper forms to electronic services.

### **Income tax forms for individuals**

The bill as introduced proposes to remove the requirement for the Commissioner of Inland Revenue to issue personal tax summary (PTS) forms to certain taxpayers; instead, these taxpayers would be required to file tax returns. By removing the distinction between the two income tax forms mainly used by individuals—the IR 3 income

tax return and the PTS—the proposal would effectively result in their amalgamation.

We consider that implementing the proposal would place excessive pressure on Inland Revenue’s computer systems and resources over the next few years, when the department will also be implementing several major policy initiatives such as changes to student loans and child support, and planning major changes to the way it operates. We understand that the proposal could be implemented more effectively later, alongside these intended changes.

We therefore recommend that this aspect of the bill not proceed, and that the two paper forms, the IR 3 and the PTS, continue to be used. (We note that, in practice, the distinction between the two forms is likely to become less apparent as Inland Revenue develops its electronic services and returns are increasingly filed online.) We are recommending numerous amendments in the bill to remove clauses that would have repealed the relevant provisions in the Tax Administration Act 1994 and the Income Tax Act 2007, and to amend wording accordingly. The main clause affected is clause 114, which would be deleted so that Part 3A of the Tax Administration Act relating to PTSs (also known as income statements) would continue in effect. Numerous consequential amendments are also recommended in clauses 88 and 100 to 129.

Clause 106 in the bill as introduced would insert a new section, 33AA, which would replace section 33A of the Tax Administration Act. New section 33AA sets out more clearly which taxpayers are exempt from filing a return. We recommend amending clause 106 to provide additional clarification. We also recommend inserting clause 109B to retain the existing filing exemption for non-resident seasonal workers, which was omitted from the redrafted section 33AA.

#### **Four-year filing requirement**

The bill (clause 106, inserting new section 33AA(4)) would require taxpayers who chose to file a tax return also to have their tax obligations reconciled for each of the previous four tax years. This is designed to avoid the current practice of “cherry-picking”, whereby people file returns only for years in which they are due a refund. We recommend an amendment which we believe would be more likely to

achieve the policy intent, so that the relevant four-year period would end with the most recently ended tax year.

We also recommend amending clause 106 to insert new section 33AA(5) so that any credits and debits arising from the application of the four-year square-up rule would be offset against each other in calculating any refund due.

We note that under the bill as introduced the four-year rule would require taxpayers who had a debit from a previous year to be subject to late payment penalties and interest from the original date on which the payment would have been due had they been required to file a return. We consider that it would be unfair to apply penalties and interest for years when a taxpayer was not required to file a return. Accordingly, we propose amending clause 106 by inserting new section 33AA(6) setting a new due date for payment; penalties and interest would apply only if payment were not made by the new date.

#### **Deferral of application date for changes to filing requirements**

We recognise that the proposals in this bill would add to pressure on Inland Revenue's resources, as it also seeks to implement several policy changes over the next few years. We therefore recommend that the application date for the changes to filing requirements be deferred by two years, to the 2016–17 tax year, but with the flexibility to bring the date forward by Order in Council if appropriate (clause 106(2)).

#### **Working for Families**

The bill proposes several minor amendments to the Working for Families tax credit provisions, including extending eligibility for the in-work tax credit to unpaid shareholder-employees of a close company (clauses 65(2) and (3)). We recommend that the effective date of this provision be changed from 1 April 2012 to 1 April 2011 (clause 2(18)). The change would give shareholder-employees access to the credit earlier but still restrain the fiscal cost of the measure. We understand that the earlier date would have no adverse impact on administrative or compliance costs.

### **Record-keeping requirements for businesses**

The bill seeks to amend the Tax Administration Act 1994 to facilitate the move by businesses from paper to electronic records. Clause 103 would allow the Commissioner of Inland Revenue to authorise data storage providers to store their clients' tax records overseas. Although it is likely that most such records would be kept in an electronic form, we consider that the Commissioner should have the flexibility to authorise the keeping of records in a different form if requested. We therefore recommend amending clause 103 to specify that records may be kept "in a form approved by the Commissioner".

### **Unsuccessful software development**

We recommend amending clause 17 to make it clearer to taxpayers when a tax deduction is allowed, that is, for expenditure on software that would need further development to become depreciable property. We also recommend amending clauses 163 and 2(8) so that proposed new section DB 31B of the Income Tax Act 2004 would apply from the 2006–07 tax year rather than 2007–08. This could benefit taxpayers who might have relied on the Commissioner's 1993 policy statement. The Commissioner is otherwise time-barred from amending the assessments of affected taxpayers.

### **Hire purchase agreements**

The bill seeks to correct a drafting error in the definition of "hire purchase agreement" that arose when the Income Tax Act was rewritten in 2004. We recommend that the relevant clauses (88(9), 88(10), 168(2), and 168(3)) be deleted from the bill so that this drafting can be considered together with work being undertaken on the wider issue of the applicability of the definition of "hire purchase agreement" to GST land transactions.

### **Profit distribution plans**

We recommend amending the definition of profit distribution plan in clause 88(14) to remove the requirement that all shareholders be notified of an issue of shares, which we consider to be unnecessary, and to make it clear that the definition does not include an issue of shares under a share purchase agreement or scheme.

We also recommend amending clause 2(23) to defer by three months the effective date of the changes to the tax rules for profit distribution plans, to 1 October 2012, to allow a reasonable transition period.

### **Amendments to GST Act**

We are recommending several amendments to the bill's provisions relating to the Goods and Services Tax Act. The main amendment we propose is discussed immediately below; the others would simply clarify and improve the existing drafting. We considered carefully the change proposed in the bill to the GST accounting basis used by liquidators and receivers, in the light of submissions received. We are satisfied with the provision as proposed (clause 140) and have decided not to recommend any amendment.

#### **Late payment fees**

Clause 137 of the bill would insert new section 5(25) in the Goods and Services Tax Act to make late payment fees charged by suppliers on overdue accounts subject to GST. This approach would mirror the existing GST treatment of discounts for prompt payment, on the basis that such fees or discounts both amount to an adjustment of the payment due for the goods or service supplied.

We recommend replacing the proposed subsection to make it clear that GST would not apply to late payment fees if the underlying charge was exempt from GST. The amended wording would also differentiate more clearly between late payment fees, which would be subject to GST, and interest payable on an overdue account, which is exempt from GST.

We also recommend extending the effective date of the proposed amendment to 1 January 2013 (clause 137(2)) to allow sufficient lead time for businesses to update their systems.

### **Amendments to KiwiSaver Act**

We recommend inserting several new clauses amending the KiwiSaver Act to establish an administrative process for employees who have reached the date at which they can make withdrawals from KiwiSaver, and can therefore choose whether or not to remain in KiwiSaver and continue to make contributions. The scheme has now

been in existence for nearly five years, and there is some uncertainty about how the process will work when employees reach their “end date” (the later of age 65 or 5 years after joining the scheme). The new clauses (153B, 153BB, 153BC, 157B, and 159B) would provide for employees to arrange a “non-deduction notice” with their employer if they wished to cancel or suspend their contributions; they would not need to apply to Inland Revenue to record their choice. We recommend that the proposed amendments apply from 1 July 2012; this would be given effect through the amendment we recommend to clause 2(22B).

Clause 159B would also clarify the start date for employees who are enrolled in KiwiSaver by their employers, and ensure that the same start date was used for all employee contributions and interest calculations.

## **Remedial and miscellaneous matters**

### **Portfolio investment entities**

The bill proposes several remedial amendments to the portfolio investment entity (PIE) rules in the Income Tax Act 2007, including some amendments to recently-enacted rules for foreign investment PIEs. We recommend several further remedial amendments in clauses 17B, 40 to 58, 84 to 88, and 94 to 95 with the aim of ensuring that the legislation operates correctly and is consistent with its original policy intent.

The effect of our proposed amendments would be to align the tax treatment of non-resident portfolio investments made through foreign investment PIEs with the way the investment would be treated if it were made directly by a non-resident investor. The mechanism would be optional for the PIE and the company.

### **Look-through companies and limited partnerships**

The bill proposes several remedial amendments relating to the look-through companies regime in the Income Tax Act 2007. In line with proposals in Supplementary Order Paper 1, we recommend several further technical amendments to correct anomalies in existing rules relating to the level of deductions that can be taken by owners of look-through companies and partners in limited partnerships. The proposed changes would ensure that the exposure of a partner or

shareholder to economic risk from their investment was calculated correctly.

We recommend new clauses 35B and 35C, which would insert or replace various subsections in sections HB11 and HG11 of the Income Tax Act relating to limitations on deductions by persons with interests in look-through companies or limited partnerships. The amendments we propose would

- make it clear that section HB 11(7) applies only when a person's income from dividends distributed from a foreign investment fund is greater than the calculated amount of the fund's income, so that when the fund makes a loss, only the positive dividend amount is counted
- clarify the definition of "recourse property", that is, property to which a creditor has recourse to enforce a guarantee or indemnity, to address more explicitly the approach to proportional attribution where an associate of more than one shareholder provides a guarantee or indemnity
- change the commencement dates specified in clause 2 for the new rules for partnerships and look-through companies, to correct drafting errors in the bill as introduced and ensure that the provisions operate as intended; taxpayers would not be disadvantaged by the changes. (While most of the partnership provisions would apply from 1 April 2012, two would apply from 1 April 2008, being the start date of the limited partnership rules. The look-through company provisions would apply from 1 April 2011.)
- introduce numerous consequential amendments in clauses 39, 55, and 88, including some providing for the same rules to apply to limited partnerships.

We also recommend inserting clause 32B so that fringe benefits provided to an owner of a look-through company or a partner of a partnership were not unintentionally attributed to an employee with whom the owner or partner was associated.

### **Shareholder continuity rules**

We recommend remedial amendments to the shareholder continuity rules as proposed in Supplementary Order Paper 1, entailing the insertion of new clauses 88(12D) and 90B. The changes would clarify

the date of the transfer of ownership interests to ensure that tax losses were not forfeited where shares were owned by a trust for the sole benefit of the New Zealand or an overseas Government, and the trust was later terminated and the shareholding transferred to the Government beneficiary.

### **Insurance policies**

The bill includes some technical amendments to the Income Tax Act 2007 to clarify the application and effect of transitional rules for life insurance policies sold before new tax rules for life insurance businesses came into effect in 2010.

We recommend the insertion of clauses 19B, 21B, and 25B to clarify the tax position relating to the valuation of an insurance company's outstanding claims reserve when an insurer transfers a line of general or non-life insurance business to another insurer part-way through an income year. At present, the legislation does not cover such a situation. A consequential amendment is also recommended in clause 26(2).

### **Auckland Council Independent Maori Statutory Board**

We recommend the insertion of clauses 88(11C) and 135(3) to amend the Income Tax Act 2007 and the Goods and Services Tax Act 1985 to deem the Auckland Council Independent Maori Statutory Board to be a "local authority" for the purposes of these Acts. The amendments would mean that the board is treated the same as other advisory boards of the Auckland Council. Like funding for other local authorities, the funding provided by the council to the board would not be subject to income tax, and the board would be able to register for GST purposes and claim back the GST content of expenses it incurred in carrying out its functions. We recommend that the proposed amendments apply from 1 November 2010, the date on which the board was established (clause 2(17C)).

### **Emissions units**

We recommend inserting clause 88(8D) to extend the definition of "forestry business" in the Income Tax Act to include forestry activities undertaken solely for the purpose of receiving emissions units, rather than for the production of timber. This amendment would

be consistent with the previous definition, which allowed foresters participating in the Permanent Forest Sink Initiative, under which harvesting was restricted, to receive deductions for expenditure on establishing and maintaining forests. Normally, deductions are not allowed for capital expenditure. We recommend amending clause 2(10) so that the change would apply retrospectively from 1 April 2008.

We also recommend replacing clause 21 to amend the accrual accounting rules which apply to industrial allocations of emissions units, by extending them to cover the allocation of emissions units for “removal activities”. These are activities which result in greenhouse gases being removed from New Zealand’s Kyoto Protocol liabilities, by means including incorporating them into products for export. We recommend a consequential amendment to clause 20B, and an amendment to clause 2(16) to apply the change retrospectively from 1 July 2010, when businesses first became entitled to removal allocations.

### **Electronic notices**

We note that the Electronic Transactions Act 2002 allows companies to provide dividend statements to shareholders by email; it also allows Maori authorities to provide distribution notices electronically to recipients if they have so consented. For legislative consistency, we believe these points should also be made explicit in the Tax Administration Act, and recommend inserting clauses 105B and 105C accordingly.

## **Appendix**

### **Committee process**

The Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was referred to the Finance and Expenditure Committee of the 49th Parliament on 27 September 2011, and the committee called for submissions. The bill was reinstated as business before the 50th Parliament on 21 December 2011. We received and considered 27 submissions from interested groups and individuals. We heard 12 submissions.

Supplementary Order Paper 1 was released by the Minister of Revenue on 7 February 2012.

We received advice from the Inland Revenue Department and the Treasury.

### **Committee membership**

Todd McClay (Chairperson)

Maggie Barry

David Bennett

Dr David Clark

Hon Clayton Cosgrove

Paul Goldsmith

John Hayes

Dr Russel Norman

Hon David Parker

Rt Hon Winston Peters

Hon Dr Nick Smith

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Peter Dunne*

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<i>Amendments to Income Tax (Determinations) Regulations 1987</i>		
176	Income Tax (Determinations) Regulations 1987	100
177	Publication of determinations	100
178	Regulation 13 replaced	100
	13 Waiver of fees	100
<i>Amendments to Tax Administration (Binding Rulings) Regulations 1999</i>		
179	Tax Administration (Binding Rulings) Regulations 1999	100
180	Fees	100

**Taxation (Annual Rates, Returns Filing,  
and Remedial Matters) Bill**

cl 2

181	Regulation 7 revoked	101
	<i>Amendments to Tax Administration (Form of Warrant) Regulations 2003</i>	
182	Tax Administration (Form of Warrant) Regulations 2003	101
183	Schedule 2—Form of warrant	101
	<i>Income Tax (Refund of Excess Tax) Order 2003</i>	
184	Income Tax (Refund of Excess Tax) Order 2003 revoked	101

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act **2011**.

**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 170(1) and (4)** come into force on 1 February 1995.
- (3) **Section 170(2) and (5)** come into force on 1 April 1998.
- (4) **Section 170(3) and (6)** come into force on 1 October 2001. 10
- (5) **Section 105** comes into force on 17 October 2002.
- (6) **Section 137** comes into force on 1 April 2003.
- (7) **Sections 100(3) and (7), 161, 162, 164, 165, 166, and 168(2) and (3) 165B, and 166** come into force on 1 April 2005. 15
- (8) **Section 163** comes into force on 1 April ~~2007~~2006.
- (9) **Section 167** comes into force on 1 October 2007.
- (10) **Sections 11, 14, 17, 18, 20, 21D, 21E, 22, 30, 32, 37, 38, 39(1A), (1AB), (1), (1E), and (2), 40, 57, 58, 59, 61, 63, 64, 65(1), 66(2), 71, 73, 75, 76(1), (2), and (4), 77, 79, 80, 81, 87B, 88(4), (7), (8D), and (19),(9), (10), (19), and (20), 94 94(3), (4), and (7), 100(4) and (8), 103(1)(a) and (c), 113, 122, and 130** come into force on 1 April 2008. 20
- (10B) **Section 37B** comes into force on 1 April 2009.
- (11) **Section 88(13)** comes into force on 9 June 2009. 25

- (12) **Sections 67, 69, and 70** come into force on 30 June 2009.
- (12B) **Sections 29C and 88(18B)** come into force on 1 July 2009.
- (13) **Section 86** comes into force on 1 February 2010.
- (14) **Sections 47 and 48** come into force on 1 April 2010.
- (15) **Section 29** comes into force on 30 June 2010. 5
- (16) **Sections 20B, 21, 25B, 26, and 27** come into force on 1 July 2010.
- (17) **Section 23** comes into force on 1 August 2010.
- (17B) **Sections 19B and 21B** come into force on 7 September 2010. 10
- (17C) **Section 88(2B)** comes into force on 27 October 2010.
- (17D) **Sections 88(11C) and 135(3)** come into force on 1 November 2010.
- (17E) **Sections 88(12D), 88B, 89(a), and 90B** come into force on 1 January 2011. 15
- (18) **Sections 34, 35, 36, 62, 88(3), (5), (6), and (8), 135, 35B, 36, 55B, 55C, 62, 65(2) and (3), 66(1) and (3), 88(3), (5), (6), (8), (8F), (12C), and (14B), 94(1), (2), (5), (6), and (8), 135(2) and (4), 136(2) and (3), 138, 139, 139B, 141, 142, 143, 144, 145, 148, 149, 150, 151, 151B, and 152** come into force on 1 April 2011. 20
- (18B) **Section 66B** comes into force on 1 July 2011.
- (19) **Sections 42, 43, 46, and 54** come into force on 29 August 2011.
- (19) **Sections 42, 43, and 46** come into force on 29 August 2011. 25
- (20) **Section 136(1)** comes into force on the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill.
- (21) **Sections 24 and 25** come into force on 1 October 2011.
- (22) **Sections 31, 41, 45, 65(2) and (3), 66(1) and (3), 76(3), and 7839(1B), (1C), (1D), and (1F), 41, 45, 76(3), 78, 88(8G) and (14C), and 95(2)** come into force on 1 April 2012. 30
- (22B) **Sections 153B, 153BB, 153BC, 157B, and 159B** come into force on 1 July 2012. 35
- (23) **Sections 6, 7, 8, 9, 10, 82, 83, 85, and 88(2), (14), (17B), and (18)** come into force on 1 July/October 2012.

- (24) **Sections 40C, 44(1B), 47B, 48B, 49B, 50(1B), 52, 52B, 58B, 84B, 88(8E) and (12E), 95(3), 96, 98, 154, and 157** come into force on 1 April 2013.
- ~~(25) Sections 15, 60, 74, 87, 88(11) and (12), 100(2), (5), and (6), 101, 102, 106, 108, 109, 111, 112, 114, 115, 116, 117, 120, 121, 123, 124, 125, 126, 127, 128, and 129~~ come into force on ~~1~~ April 2014. 5
- (25) **Sections 74B, 88(12), 100(5), 103(2B), 105D, 106, 108, 109, 109B, 110B, 111, 112, 114B, 114C, 114D, 114E, 114F, 119B, 120, 126B, 127B, and 159C** come into force 10 on 1 April 2016 or on an earlier date set by Order in Council.

## Part 1

### Annual rates of income tax

- 3 **Annual rates of income tax for 2012–13 tax year**  
Income tax imposed by section BB 1 of the Income Tax Act 15 2007 must, for the 2012–13 tax year, be paid at the basic rates specified in schedule 1 of that Act.

## Part 2

### Amendments to Income Tax Act 2007

- 4 **Income Tax Act 2007** 20  
This Part amends the Income Tax Act 2007.
- 5 **Films**  
Section CC 10(4) is repealed.
- 6 **Bonus issues in lieu of dividend**  
In section CD 7(2), “, minus any resident withholding tax 25 (RWT) payable in relation to the dividend” is omitted.
- 7 **New section CD 7B**  
After section CD 7, the following is inserted:  
“**CD 7B Shares issued under profit distribution plans**  
“*Profit distribution plan shares* 30  
“(1) A share issued by a company under a profit distribution plan is a dividend.

	<i>“Amount of dividend</i>	
“(2)	The amount of the dividend is the amount offered by the company for the repurchase of the share.	
	<i>“Relationship with section CD 22</i>	
“(3)	Section CD 22 does not apply in relation to a share issued under a profit distribution plan and repurchased by the company as part of the plan.	5
	<i>“Defined in this Act: amount, company, dividend, profit distribution plan, RWT, share”.</i>	
<b>8</b>	<b>Elections to make bonus issue into dividend</b>	<b>10</b>
(1)	In section CD 8(1), “A bonus issue that is not a bonus issue in lieu” is replaced by “A bonus issue that is not a bonus issue in lieu or a share issued under a profit distribution plan”.	
(2)	In section CD 8, in the list of defined terms, “profit distribution plan” and “share” are inserted.	15
<b>9</b>	<b>New section CD 23B</b>	
	After section CD 23, the following is inserted:	
	<b>“CD 23B Returns of capital: shares repurchased under profit distribution plans</b>	
	<i>“When this section applies</i>	<b>20</b>
“(1)	This section applies when a company has issued a share to a shareholder under a profit distribution plan and the shareholder exercises the option to have the share repurchased by the company.	
	<i>“Amount paid</i>	<b>25</b>
“(2)	The amount paid by the company to repurchase the share is not a dividend.	
	<i>“Defined in this Act: amount, company, dividend, pay, profit distribution plan, share, shareholder”.</i>	
<b>10</b>	<b>Available subscribed capital (ASC) amount</b>	<b>30</b>
(1)	<del>Section CD 43(2)(c) is replaced by the following:</del>	
	<del>“(c) <b>returns</b>, subject to subsections (22) and (23), is the total amount of consideration that the company paid, after 30 June 1994 and before the calculation time, on—</del>	

- “(i) the cancellation of shares in the relevant class and that was not a dividend because of section CD 22 or CD 24 of a corresponding provision of an earlier Act:
- “(ii) the repurchase of a share that is not a dividend because of **section CD 23B**.” 5
- (1) In section CD 43(2)(c), “section CD 22 or CD 24” is replaced by “section CD 22, **CD 23B**, or CD 24”.
- (2) After section CD 43(6)(a), the following is inserted:  
“(ab) in the case of a share issued under a profit distribution plan, the amount offered by the company for the repurchase of the share; and” 10
- (3) In section CD 43(6)(b), “that is not a bonus issue in lieu” is replaced by “that is not a bonus issue in lieu or a share issued under a profit distribution plan” 15
- (4) In section CD 43(7)(a), “neither subsection (6)(a) nor (b)” is replaced by “none of subsection (6)(a), **(ab)**, or (b)”.
- (5) In section CD 43, in the list of defined terms, “profit distribution plan” is inserted.
- 11 Meaning of expenditure on account of an employee** 20
- (1) Section CE 5(1), other than the heading, is replaced by the following:  
“(1) **Expenditure on account of an employee** means a payment made by an employer relating to expenditure incurred by an employee or to be incurred by an employee.” 25
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 12 Section CV 17 repealed**  
Section CV 17 is repealed.
- 13 Dividends paid by qualifying companies** 30  
In section CW 15, in the list of defined terms, “bonus issue” is omitted.

**14 Expenditure on account, and reimbursement, of employees**

- (1) In section CW 17(1), “Expenditure on account of an employee” is replaced by “Expenditure on account of an employee, being a payment to which section CE 5 (Meaning of expenditure on account of an employee) applies, that is”. 5
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**15 Assistance with tax returns**

- (1) ~~In section CX 27, “income statement or return” is replaced by “return”.~~ 10
- (2) ~~In section CX 27, in the list of defined terms, “income statement” is omitted.~~

**16 Proceeds from disposal of investment shares**

- (1) Section CX 55(4), other than the heading, is replaced by the following: 15
- “(4) This section does not apply to—
- “(a) a fixed-rate share, within the meaning of paragraphs (a) to (d) of the definition of that term; or
- “(b) a share for which the amount payable on cancellation is no more than the available subscribed capital per share calculated under the slice rule.” 20
- (2) In section CX 55, in the list of defined terms,—
- (a) “non-participating redeemable share” is omitted;
- (b) “available subscribed capital”, “fixed-rate share”, “pay”, and “slice rule” are inserted. 25

**16B Section CZ 23 repealed**

Section CZ 23, as inserted by section 11 of the Taxation (Tax Administration and Remedial Matters) Act 2011, is repealed.

**16C New section CZ 25**

After section CZ 24, the following is inserted:

30

**“CZ 25 Insurance or compensation for buildings replaced  
as revenue account property affected by Canterbury  
earthquakes**

*“When this section applies*

**“(1) This section applies for a person and an income year (the **current year**) before the 2016–17 income year when the person,—** 5

**“(a) in or before the current year, receives insurance or other compensation for buildings (the **affected property**), each of which is revenue account property and, as a result of a Canterbury earthquake as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011 is rendered useless for the purpose of deriving income, and demolished or abandoned for later demolition, because of damage to the building or to the neighbourhood of the building; and** 10 15

**“(b) in the absence of this section, would have in or before the current year a total amount of income under section CG 6 (Receipts from insurance, indemnity, or compensation for trading stock) from the insurance or compensation for the affected property that exceeds the total amount of deductions under section DB 23 (Cost of revenue account property) for the affected property; and** 20

**“(c) plans in the current year to acquire property (the **replacement property**) replacing affected property and meeting the requirements of **subsection (4)**; and** 25

**“(d) gives written notice to the Commissioner under **subsection (6)** in relation to the affected property.**

*“Suspended recovery income*

**“(2) The amount of the excess (the **excess recovery**) referred to in **subsection (1)(a)** is not income of the person except to the extent of the amount (the **suspended recovery income**) remaining after adjustment under **subsection (3)** that is attributed to an income year by **subsection (5)**.** 30

*“Effect of purchase of replacement property* 35

**“(3) If the person incurs expenditure (the **replacement cost**) to acquire replacement property,—**

- “(a) for the purposes of determining the value of the replacement property for section EA 2 (Other revenue account property), the amount of the person’s expenditure on the replacement property, to the extent that it is less than or equal to the total amount of the income under section CG 6 for the affected property, is treated as being reduced by an amount calculated by multiplying the replacement cost by the excess recovery and dividing the result by the total amount of deductions under section DB 23 for the affected property; and 5
- “(b) the amount of the suspended recovery income immediately before the expenditure is reduced by an amount equal to the reduction of expenditure under **paragraph (a)** for the purposes of section EA 2. 10
- “Requirements for replacement property”* 15
- “(4) For an item of affected property, replacement property must be a building that is revenue account property—
- “(a) acquired in or before the person’s 2015–16 income year; and
- “(b) located in greater Christchurch as that term is defined in section 4 of the Canterbury Earthquake Recovery Act 2011. 20
- “Amount remaining at end of 2015–16 income year or when person changes intentions, is liquidated, or becomes bankrupt”*
- “(5) The person has an amount of income for the affected property in the current year equal to the amount of suspended recovery income when— 25
- “(a) the current year ends, if the current year is the 2015–16 income year:
- “(b) in the current year, the person decides not to replace the affected property: 30
- “(c) in the current year, the person goes into liquidation or becomes bankrupt.
- “Notice of election for affected property”*
- “(6) A person choosing to rely on this section to suspend in a current year the recognition of suspended recovery income from the insurance for affected property must give written notice to the Commissioner— 35

- “(a) by the later of 31 January 2012 and the date on which the return of income is filed for the earliest income year (the **estimate year**) in which the amount of the insurance for the affected property can be reasonably estimated; and
- “(b) if the current year is after the estimate year,— 5
- “(i) for each income year between the estimate year and the current year, by the date on which the return of income is filed for that income year; and
- “(ii) for the current year, by the date on which the return of income is filed for the current year. 10
- “Contents of notice of election*
- “(7) A notice under **subsection (6)** must—
- “(a) describe the affected property; and
- “(b) give details of replacement property acquired in the current year to replace, in full or in part, the affected property; and 15
- “(c) give the cost of the replacement property and the reduction under **subsection (3)** of that cost for the purposes of section EA 2; and
- “(d) give the amount, for the affected property, of the income from insurance or compensation remaining suspended under this section at the end of the current year. 20
- “Relationship to section CG 6*
- “(8) This section overrides section CG 6.
- “Defined in this Act: amount, deduction, income, income year, notice, return of income”. 25
- 17 New heading and section DB 40B inserted**
- (1) After section DB 40, the following is inserted:
- “Unsuccessful software development*
- “DB 40B Expenditure in unsuccessful development of software** 30
- “When this section applies*
- “(1) This section applies when a person incurs expenditure in the development of software for use in the person’s business if—
- “(a) the person incurs the expenditure with the main intention that the software be used in the person’s business; and 35

“(b) the development of the software is abandoned before the software is fit to be used in the person’s business; and

“(c) the person would have been entitled to a deduction for an amount of depreciation loss for the software if the software had been made fit to be used in the person’s business. 5

“(a) the development of the software is abandoned when the software is not depreciable property of the person; and

“(b) the software would have been depreciable property of the person if the development had been completed. 10

*“Deduction*

“(2) The person is allowed a deduction for expenditure incurred in the development of the software to the extent to which no deduction has been allowed for the expenditure under another provision of this Act or under another Act. 15

*“Timing of deduction*

“(3) The deduction is allocated to the income year in which the development of the software is abandoned.

*“Link with subpart DA* 20

“(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

“Defined in this Act: capital limitation, deduction, general limitation, general permission, income year”. 25

(2) **Subsection (1)** applies for the 2008–09 and later income years.

**17B Expenditure incurred by foreign investment PIEs**

(1) Section DB 54B(1), other than the heading, is replaced by the following: 30

“(1) This section applies when a foreign investment PIE incurs expenditure or loss in deriving income attributable to—

“(a) a notified foreign investor in the PIE;

“(b) a transitional resident who has chosen under section HM 55D(9) (Requirements for investors in foreign investment PIEs) to use the specified prescribed investor rate.” 35

- (2) In section DB 54B, in the list of defined terms, insert “prescribed investor rate” and “transitional resident”.

**18 Some definitions**

- (1) In section DC 15(1), in the definition of **employee**, paragraph (a) is replaced by the following: 5
- “(a) means a person that—
- “**(i)** is employed by a company:
- “**(ii)** is not a corporation sole, a body corporate, or an unincorporated body:”.
- (2) In section DC 15(1), in the definition of **employee**,— 10
- (a) in paragraph (b)(ii), “the company; or” is replaced by “the company”:
- (b) paragraph (b)(iii) is repealed.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 15

**19 Non-resident general insurers, shippers, and film renters**

- (1) In section DW 3, the section heading is replaced by “**Non-resident general insurers and shippers**”.
- (2) In section DW 3(2)(b), “New Zealand:” is replaced by “New Zealand.”. 20
- (3) Section DW 3(2)(c) is repealed.

**19B Deduction for general insurance outstanding claims reserve**

- (1) In section DW 4(6), “The general limitations still apply” is replaced by “The general limitations still apply, except that the capital limitation does not apply for general insurance contracts after they are transferred to an insurer”. 25
- (2) In section DW 4, in the list of defined terms, “capital limitation” is inserted.
- (3) **Subsections (1) and (2)** apply to a transfer of general insurance contracts— 30
- (a) on and after 1 October 2012, unless **paragraph (b)** applies:
- (b) on and after 7 September 2010, if the transferor chooses to apply **subsection (1)** and the transfer is made— 35

- (i) to a transferee who is a non-resident and does not carry on a business in New Zealand through a fixed establishment; and
- (ii) for the purposes of complying with the Insurance (Prudential Supervision) Act 2010.

5

**20 Application of subpart**

- (1) Section EC 1(1) is replaced by the following:

*“When this subpart applies*

- “(1) This subpart applies to the valuation of property when a person who owns or carries on a business holds livestock for the purposes of sale or exchange in the ordinary course of carrying on the business.”

10

- (2)
- Subsection (1)**
- applies for the 2008–09 and later income years. However,
- subsection (1)**
- does not apply to a person in relation to a tax position taken by the person—

15

- (a) in the period from 1 April 2008 to 31 May 2011; and
- (b) relating to the valuation of livestock; and
- (c) relying on the provisions of subpart EC as they were before the amendment made by **subsection (1)**.

**20B Valuation of excepted financial arrangements**

20

In section ED 1(7B)(a), “section 64, or” is omitted.**21 Valuation of emissions units issued for zero price**

- (1)
- ~~In section ED 1B(1)(a)(ii), “agreement; and”<sup>22</sup> is replaced by “agreement.”<sup>22</sup> and the following is added:~~

~~“(iii) by a public authority as a rebate, under a negotiated greenhouse agreement, for an indirect emissions charge; and”<sup>22</sup>.~~

25

- (2)
- ~~After section ED 1B(7)(a)(iii), the following is added:~~

~~“(iv) emissions units corresponding to a rebate, under a negotiated greenhouse agreement, for an indirect emissions charge.”<sup>22</sup>.~~

30

- (1)
- Section ED 1B(1)(a)(i) and (ii) are replaced by the following:

“(i) under sections 80 to 86F of the Climate Change Response Act 2002:

- “(ii) under section 64 of the Climate Change Response Act 2002 for a removal activity listed in Schedule 4, Part 2 of that Act:
- “(iii) by a public authority under a supplementary agreement to a negotiated greenhouse agreement: 5
- “(iv) by a public authority as a rebate, under a negotiated greenhouse agreement, for an indirect emissions charge; and”.
- (2) Section ED 1B(1)(d), (e), and (f) are repealed. 10
- (3) Section ED 1B(7)(a)(iii) is replaced by the following:
- “(iii) allocation entitlement under section 64 of the Climate Change Response Act 2002 for a removal activity listed in Schedule 4, Part 2 of that Act:
- “(iv) emissions units corresponding to the actual emissions amount under a supplementary agreement to a negotiated greenhouse agreement: 15
- “(v) emissions units corresponding to a rebate, under a negotiated greenhouse agreement, for an indirect emissions charge:”. 20
- 21B New section ED 3**
- (1) After section ED 2, the following is added:
- “ED 3 Part-year tax calculations for transfers: general insurance OCR**
- “When this section applies 25
- “(1) This section applies when an insurer to whom sections CR 4 and DW 4 (which relate to outstanding claims reserves) apply (the transferor) transfers general insurance contracts to another person (the transferee) in an income year.
- “Part-year calculations for transfers 30
- “(2) The transferor does a part-year calculation immediately before the transfer, as described in subsection (3), for the transferred general insurance contracts, but only for their part-year ending on the day the transfer occurs. The transferee also does a part-year calculation for the transferred contracts, as described in subsection (3), but only for their part-year starting on the day the transfer occurs. The transferee’s relevant opening out- 35

standing claims reserve amounts equal the transferor’s relevant closing outstanding claims reserve amounts immediately before the transfer, but if the reinsurance associated with transferred policies is not assigned by the transferor to the transferee, the transferee’s reserve amounts are calculated without subtracting relevant reinsurance amounts. 5

*“Part-year calculations for transfers: description*

“(3) For calculating their income tax liability for the tax year that corresponds to the income year, the transferor and transferee treat references, in sections CR 4 and DW 4 and in the new life insurance rules, to an income year or a tax year as if they are references to 2 separate tax years and corresponding income years (the **part-years**) within that tax year. 10

*“Part-year calculations for transfers: effect*

“(4) Transferor’s and transferee’s part-year calculations may give rise to income and deductions for the income year, but they do not create any part-year tax return obligations. 15

“Defined in this Act: amount, deduction, general insurance, IFRS 4, income, income tax liability, income year, insurer, outstanding claims reserve, pay, tax year”. 20

(2) **Subsection (1)** applies to a transfer of general insurance contracts—

(a) on and after 1 October 2012, unless **paragraph (b)** applies:

(b) on and after 7 September 2010, if the transferor chooses to apply **subsection (1)** and the transfer is made— 25

(i) to a transferee who is a non-resident and does not carry on a business in New Zealand through a fixed establishment; and

(ii) for the purposes of complying with the Insurance (Prudential Supervision) Act 2010. 30

### 21C What this subpart does

In section EE 1(3)(c), “section EE 38” is replaced by “section EE 47”.

**21D Total deductions in section EE 56**

In section EE 60(5)(a)(ii), “section EE 55(4)” is replaced by “section EE 6(4)”.

**21E Use of money interest payable by person**

In section EF 5(2), “income tax liability” is replaced by “assessed liability”.

**22 Spreading forward of deductions for repairs to fishing boats**

- (1) In section EJ 2(1), “Part 10 of the Maritime Transport Act 1994” is replaced by “Part 21 of the Maritime Rules made under the Maritime Transport Act 1994”.
- (2) In section EJ 2(6), in the definition of **fishing boat**, “a fishing boat under Part 4 of the Fisheries Act 1983” is replaced by “a fishing vessel under section 103 of the Fisheries Act 1996”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years.

**23 Exemption for ASX-listed Australian companies**

In section EX 31(2)(c), in the words before the paragraphs, “ASX Market Rules, made under Chapter 7 of the Corporations Act 2001 (Aust),” is replaced by “ASX Operating Rules”.

**24 Section EX 39 repealed**

- (1) Section EX 39 is repealed.
- (2) **Subsection (1)** applies for the 2012–13 and later income years.

**25 Measurement of cost**

- (1) After section EX 68(11), the following is added:  
*“Optional transitional rule: interests excluded by section EX 39 until 2012–13 income year*
- “(12) For interests that were acquired by the person before 1 January 2005 and excluded by section EX 39 from being attributing interests until the beginning of the 2012–13 income year, the person may choose to treat the cost of every interest as being

the market value of the interest at the beginning of the 2012–13 income year, for the purposes of the \$50,000 threshold in sections CQ 5(1)(d) or (e) and DN 6(1)(d) or (e).”

- (2) **Subsection (1)** applies for the 2012–13 and later income years. 5

### **25B Part-year tax calculations**

In section EY 5(4),—

- (a) “part-year calculation, as described” is replaced by “part-year calculation immediately before the transfer, as described”: 10
- (b) “reserve amounts, and” is replaced by “reserve amounts immediately before the transfer, and”.

### **26 Shareholder base other profit: profit participation policies that are existing business**

- (1) In section EY 28(8), in the definition of **existing business**,— 15
- (a) in paragraph (a), “2009; or” is replaced by “2009:”;
- (b) in paragraph (b)(ii), “2009.” is replaced by “2009:”.
- (2) In section EY 28(8), in the definition of **existing business**, the following is added:
- “(c) the replacement of another policy (the **replaced policy**) caused by a life insurer being sold, or selling or transferring its rights and obligations under the replaced policy, and— 20
- “(i) the replaced policy was existing business under this subsection; and 25
- “(ii) the replaced policy and the policy have the same substantial and material terms, conditions, and bonus entitlements ignoring any annual increase in life insurance cover that is less than 10% or is less than the annual percentage change in the consumer price index.” 30
- (3) **Subsections (1) and (2)** apply—
- (a) on and after 1 July 2010, except if **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new 35

life insurance rules in the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 in a return of income for the tax year corresponding to the first relevant income year.

- 27 Transitional adjustments: life risk** 5
- (1) Section EY 30(1)(a) is replaced by the following:
- “(a) reinstating the old policy after either a lapse in premium payments or cancellation by the insured, if the new policy comes into force within 90 days of the lapse or cancellation, and the life insurer treats the new policy and old policy the same; or” 10
- (2) In section EY 30(1)(b), “selling” is replaced by “selling or transferring”.
- (3) In section EY 30(3),—
- (a) in the words before the paragraphs “the individual lives covered, if the policy is issued” is replaced by “either the individual lives covered or a relevant underlying life insurance policy, if the multiple life policy (the **policy**) is issued”: 15
- (b) in paragraph (b), “individual lives covered” is replaced by “individual lives covered or relevant underlying life insurance policy”. 20
- (4) Section EY 30(3)(c) is replaced by the following:
- “(c) to the extent to which, looking through to and in relation to the individual lives covered or relevant underlying policy,— 25
- “(i) the cover was first in place before the grandparenting start day:
- “(ii) the multiple life policy is a life reinsurance policy that was first in place before the grandparenting start day; and” 30
- (5) **Subsections (1) to (4)** apply—
- (a) on and after 1 July 2010, except if **paragraph (b)** applies:
- (b) for an income year that includes 1 July 2010 and later income years, if the life insurer chooses to apply the new life insurance rules in the Taxation (International Tax-

ation, Life Insurance, and Remedial Matters) Act 2009  
in a return of income for the tax year corresponding to  
the first relevant income year.

- 28 Section EZ 32 repealed** 5  
Section EZ 32 is repealed.
- 29 Disposal and acquisition upon entry**  
In section EZ 63, in the list of defined terms, “portfolio-listed  
company” is omitted.
- 29B Transfer at market value** 10  
In section FC 2(3), “subsection” is replaced by “section”.
- 29C Alternative apportionment of interest by some excess  
debt entities**  
In section FE 6B(3)(a), “is the deductions” is replaced by “net  
interest is the deductions”.
- 30 Measurement dates** 15  
(1) In section FE 8(4), “the first measurement date for the new re-  
porting bank is the day” is replaced by “the first measurement  
period for the new reporting bank begins on the day”.  
(2) **Subsection (1)** applies for the 2008–09 and later income  
years. 20
- 31 Banking group’s equity threshold**  
(1) In section FE 19(1), the formula is replaced by the following:  
 $0.06 \times (\text{risk-weighted exposures} - \text{deductions from equity value}).$   
(2) **Subsection (1)** applies for measurement dates under section  
FE 8(3) of the Income Tax Act 2007 for periods beginning on  
or after 1 April 2012. 25
- 32 Transactions between group companies: income**  
(1) In section FM 8(3)(b)(ii), “if the parties were not group com-  
panies” is replaced by “if the parties were not consolidated  
group companies”.

- (2) **Subsection (1)** applies for the 2008–09 and later income years, except for a tax position that is inconsistent with **subsection (1)** and is taken in a tax return filed before 23 August 2011.

**32B Benefits provided to employee’s associates** 5

- (1) In section GB 32(1)(d), “exemption in subsection (2) does” is replaced by “exemptions in subsections (2) and (2B) do”.

- (2) After section GB 32(2), the following is inserted:

*“Exemption for LTCs and partnerships*

- “(2B) Subsection (3) does not apply when— 10

“(a) the benefit is provided by an employer that is—

“(i) an LTC:

“(ii) a partnership or limited partnership; and

“(b) the person associated with the employee, described in subsection (1)(a), is— 15

“(i) an owner of the relevant LTC:

“(ii) a partner of the relevant partnership or limited partnership.”

- (3) In section GB 32, in the list of defined terms, “limited partnership”, “LTC”, “partner”, and “partnership ” are inserted. 20

**33 Grandparenting requirement**

- (1) In section HA 7B “1 April 2011” is replaced by “1 April 2011 and must not have amalgamated, on or after the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act **2011** receives the Royal assent, with another company that is not a qualifying company”. 25

- (2) In section HA 7B, in the list of defined terms “amalgamation” is inserted.

**33B Measuring effective interests**

In section HA 44(1), in the words before the paragraphs, “control and ownership” is replaced by “ownership”. 30

**34 Look-through companies are transparent**

After section HB 1(5), the following is added:

*“Elections and methods*

- “(6) Inland Revenue Act elections and methods relating to an LTC are chosen by the company ignoring subsection (4), and then subsection (4) applies so that the elections and methods are those of an owner of an effective look-through interest for the look-through company.” 5

**35 Disposal of financial arrangements and certain excepted financial arrangements**

In section HB 8(1)(b), “owners do not derive income from” is replaced by “look-through company does not have”. 10

**35B Limitation on deductions by persons with interests in look-through companies**

- (1) In section HB 11(5)(c), “paragraph (b)” is replaced by “paragraph (b) by the person or another person”.
- (2) Section HB 11(7)(a) is replaced by the following: 15  
“(a) income that the person has by virtue of section HB 1 in the income year and previous income years:  
“(ab) if the person has FIF income or a FIF loss, an amount under **subsection (7B)**.”.
- (3) After section HB 11(7), the following is inserted: 20  
“Formula  
“(7B) The amount described in **subsection (7)(ab)** is given by the following formula, but if the calculation returns a negative number, the amount is zero:

$$\text{dividend} - \text{FIF amount.}$$

*“Definition of items in formula* 25

- “(7C) In the formula,—
- “(a) **dividend** is the amount that would, under section HB 1, be the person’s proportion of the dividend paid by a FIF to the LTC, if section CD 36(1) were ignored:
- “(b) **FIF amount** is— 30  
“(i) zero, if subparagraph (ii) does not apply:  
“(ii) the amount that is the person’s FIF income, for the relevant income year and FIF, if the person has such an amount.”

(4) Section HB 11(12) is replaced by the following:

“Some definitions

“(12) In this section,—

“guarantor means—

“(a) a person (**person A**) who has an effective look-through interest for the LTC, if— 5

“(i) person A, ignoring section HB 1, secures the relevant debt by guarantee or indemnity:

“(ii) an owner’s associate of person A secures the relevant debt by guarantee or indemnity: 10

“(b) a person who is not described in **paragraph (a)(i) and (ii)** but who secures the relevant debt by guarantee or indemnity, if person A or an owner’s associate also secures the relevant debt as described in **paragraph (a)(i) or (ii)** 15

“**look-through company deduction** means, for the person and the income year, the amount of the deductions that the person would be allowed if they were treated as having only income and deductions arising from the application of this subpart 20

“**owner’s associate** means a person who does not have an effective look-through interest for the LTC and who is—

“(a) a relative of a person who has an effective look-through interest for the LTC:

“(b) a trustee who is associated in their capacity of trustee, with a person who has an effective look-through interest for the LTC 25

“**recourse property** means property to which a creditor has recourse, to enforce a guarantee or indemnity for the relevant debt, if the guarantee or indemnity expressly provides recourse to only that property 30

“**secured amounts** means, for the person, the lesser of the following applicable amounts:

“(a) the amount of the look-through company’s debt ignoring section HB 1 (the **secured debt**) for which the person is a guarantor, divided by the total number of guarantors for the secured debt: 35

- “(b) the market value of the recourse property for the secured debt to the extent of the interest that the person and their owner’s associates have in it, net of higher-ranking calls whether actual, future or contingent, divided by the total number of guarantors described in **paragraph (a)** of the definition of **guarantor** who have an interest in the recourse property or have an owner’s associate with an interest in the recourse property.” 5
- (5) In section HB 11, in the list of defined terms, “FIF loss”, “guarantor”, “owner’s associate”, and “recourse property” are inserted. 10
- 36 LTC elections**
- In section HB 13(5), “subsections (1)(b) and (2)” is replaced by “subsection (1)(a) and (d)”.
- 37 Taxable distributions from foreign trusts** 15
- (1) In section HC 18, “section CV 13(b)” is replaced by “section CV 13(c)”.
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 37B Trustees’ obligations** 20
- (1) Section HC 24(2) is replaced by the following:  
*“No tax credits*
- “(2) In determining the income tax liability, the trustee is not entitled to have a tax credit under subparts LC and LD (which relate to tax credits for natural persons and for certain gifts).” 25
- (2) **Subsection (1)** applies for the 2009–10 and later income years.
- 38 Foreign-sourced amounts: non-resident trustees**
- (1) In section HC 25(1), “when a non-resident trustee derives” is replaced by “when a non-resident trustee derives, other than as beneficiary income,”. 30
- (2) **Subsection (1)** applies for the 2008–09 and later income years.

**39 Limitation on deductions by partners in limited partnerships**

(1A) Section HG 11(7)(a) is replaced by the following:

“(a) income that the partner has by virtue of section HG 2 in the income year and previous income years: 5

“(ab) if the partner has FIF income or a FIF loss, an amount under **subsection (7B)**:”.

(1AB) After section HG 11(7), the following is inserted:

*“Formula*

“(7B) The amount described in **subsection (7)(ab)** is given by the following formula, but if the calculation returns a negative number, the amount is zero: 10

dividend – FIF amount.

*“Definition of items in formula*

“(7C) In the formula,—

“(a) **dividend** is the amount that would be the partner’s share of the dividend paid by a FIF to the limited partnership, if section CD 36(1) (Foreign investment fund income) were ignored: 15

“(b) **FIF amount** is—

“(i) zero, if **subparagraph (ii)** does not apply: 20

“(ii) the amount that is the person’s FIF income, for the relevant income year and FIF, if the person has such an amount.”

(1) In section HG 11(12), the definition of **capital contribution** is replaced by the following: 25

“**capital contribution** includes—

“(a) a capital contribution for the purposes of the Limited Partnerships Act 2008:

“(b) amounts that the limited partnership is debtor for in relation to the partner, including a loan to the limited partnership and a credit balance in a current account” 30

(1B) In section HG 11(12), after the definition of **capital contribution**, the following is inserted:

“**guarantor** means—

“(a) a partner, if— 35

- “(i) the partner secures the relevant debt by guarantee or indemnity:
- “(ii) the partner’s associate secures the relevant debt by guarantee or indemnity:
- “(b) a person who is not described in **paragraph (a)(i) and (ii)** but who secures the relevant debt by guarantee or indemnity, if the partner or a partner’s associate also secures the relevant debt as described in **paragraph (a)(i) or (ii)**”. 5
- (1C) In section HG 11(12), in the definition of **partner’s associate**, paragraph (a), “partner” is replaced by “partner, but excluding a person under **section YA 1** (Definitions), definition of **relative**, paragraph (v)”. 10
- (1D) In section HG 11(12), the definition of **secured amounts** is replaced by the following: 15
- “**recourse property** means property to which a creditor has recourse, to enforce a guarantee or indemnity for the relevant debt, if the guarantee or indemnity expressly provides recourse to only that property
- “**secured amounts** means, for the partner, the lesser of the following applicable amounts— 20
- “(a) the amount of the limited partnership’s debt ignoring section HG 2 (the **secured debt**) for which the partner is a guarantor, divided by the total number of guarantors for the secured debt: 25
- “(b) the market value of the recourse property for the secured debt to the extent of the interest that the partner and the partner’s associates have in it, net of higher-ranking calls whether actual, future, or contingent, divided by the total number of the total number of guarantors described in the definition of **guarantor**, **paragraph (a)**, who have an interest in the recourse property or have a partner’s associate with an interest in the recourse property.” 30
- (1E) In section HG 11, in the list of defined terms, “FIF loss” is inserted. 35
- (1F) In section HG 11, in the list of defined terms, “guarantor”, “recourse property”, and “secured amounts” are inserted.

- (2) In section HG 11, in the list of defined terms, “loan” is inserted.

**40 Portfolio entity tax liability and tax credits of portfolio tax rate entity for period**

- (1) After section HL 21(9), the following is inserted:  
“Amounts excluded from determination of prescribed investor rate 5

“(9B) For the purposes of subsection (9) and the determination of a person’s prescribed investor rate, the person’s taxable income does not include an amount that—

“(a) arises because their portfolio investor rate is lower than their prescribed investor rate; and 10

“(b) is treated as taxable income because section CX 56 (Attributed income of certain investors in multi-rate PIEs) does not apply.”

- (2) Section HL 21(13) is repealed. 15

- (3) **Subsection (1)** applies for the 2008–09 and later income years.

**40B Foreign PIE equivalents**

- (1) After the heading for section HM 3, *General definition* is inserted as a subsection heading. 20

- (2) After section HM 3(e), the following is inserted as subsection (2):

“*Australian managed investment trusts*

- “(2) A trust that is, for Australian tax purposes, a managed investment trust under the Taxation Administration Act 1954 (Australia) is a foreign PIE equivalent if it meets the requirement in subsection (1)(a).” 25

**40C What is an investor class?**

- (1) After section HM 5(4), the following is inserted:

“*Supplementary dividends* 30

- “(5) For the purposes of this section, the payment of a supplementary dividend that is attributed to a notified foreign investor, or would be attributed to them in the absence of section HM 44B(2), is disregarded.”

- (2) In section HM 5, in the list of defined terms, “supplementary dividend” is inserted.
- (3) Subsections (1) and (2) apply for the 2013–14 and later income years.
- 41 Optional look-through rule for PIEs** 5
- (1) Section HM 6B(2) is replaced by the following:  
*“Look-through treatment: income*
- “(2) The retail PIE may choose to apply a look-through approach to the income derived from the wholesale PIE,—
- “(a) treating the income as if it were derived directly from the person who paid the amount to the wholesale PIE; and
- “(b) disregarding the payment from the wholesale PIE.”
- (2) After section HM 6B(3), the following is added:  
*“Look-through treatment: expenditure* 15
- “(4) Despite **subsection (2)**, if the income derived by the retail PIE is less than the amount of the retail PIE’s share of the gross income received by the wholesale PIE, the retail PIE is treated as having incurred expenditure equal to the amount calculated using the formula— 20
- $$\text{income paid to wholesale PIE} - \text{amount derived by retail PIE.}$$
- (3) In section HM 6B, in the list of defined terms, “gross” is inserted.
- (4) **Subsections (1) and (2)** apply for the 2012–13 and later income years.
- 41 Section HM 6B replaced** 25
- (1) Section HM 6B is replaced by the following:
- “HM 6B Optional look-through rules for certain PIEs  
*“When this section applies*
- “(1) This section applies when a PIE (a retail PIE) is a zero-rated investor in another PIE (a wholesale PIE). 30

“Look-through treatment

“(2) The retail PIE may choose to apply a look-through approach in relation to its investor interest, treating the attributed PIE income or attributed PIE loss as consisting of—

“(a) the proportion of the assessable income derived by the wholesale PIE that corresponds to the investor interest; and

“(b) the proportion of the expenditure or loss incurred by the wholesale PIE that corresponds to the investor interest.

“Sufficient information held by PIE

“(3) In choosing to apply this section, the retail PIE must have sufficient information to enable it to account for the income, expenditure, or loss, and to discharge its tax obligations in relation to those amounts.

“Inter-PIE transactions

“(4) In the application of **subsections (1) to (3)**, any transaction or attribution between the wholesale PIE and retail PIE relating to the income or expenditure is ignored.

“Foreign investment PIEs

“(5) When a retail PIE that is a foreign investment variable-rate PIE derives an amount allowable under section HM 55G through having an investor interest in a wholesale PIE that meets the requirements of section HM 19B(1), the retail PIE may treat the amount as a foreign-sourced amount.

“Defined in this Act: amount, assessable income, attributed PIE income, attributed PIE loss, foreign investment variable-rate PIE, foreign-sourced amount, investor interest, PIE”.

(2) **Subsection (1)** applies for the 2012–13 and later income years.

**42 Investment types**

- (1) Section HM 11(2) is repealed.
- (2) In section HM 11(3), “subsection (1)(a)” is replaced by “subsection (1)(a) and modifies subsection (1)(d)”.

**43 Income sources**

In section HM 12(2), “section HM 19B(2)” is replaced by “section HM 19B(1)”.

**43B** Minimum number of investors

In section HM 14(1), replace “a company listed on a recognised exchange in New Zealand” with “a listed PIE”.

**44** Same rights to all investment proceeds

(1) Section HM 17(3) is replaced by the following: 5

*“Exclusions*

“(3) This section does not apply if—

“(a) the proceeds are category B income:

“(b) for a single investor class, the only income that the class derives is income under section CC 3 (Financial arrangements).” 10

(1B) After section HM 17(3), the following is added:

*“Supplementary dividends*

“(4) For the purposes of this section, the payment of a supplementary dividend that is attributed to a notified foreign investor, or would be attributed to them in the absence of section HM 44B(2), is disregarded.” 15

(2) In section HM 17, in the list of defined terms, “~~income~~” and “~~investor class~~” “income”, “investor class”, “notified foreign investor”, and “supplementary dividend” are inserted. 20

(3) **Subsection (1B)** applies for the 2013–14 and later income years.

**45** Modified rules for foreign investment variable-rate PIEs

(1) In section HM 19C(2), “section HM 12(a) and (b)(v)” is replaced by “section HM 12(a) and (b)(iv) and (v)”. 25

(2) **Subsection (1)** applies for the 2012–13 and later income years:

(1) In section HM 19C(1), “section HM 11(a)” is replaced by “section HM 11(1)(a)”.

(2) In section HM 19C(2), “section HM 12(a) and (b)(v)” is replaced by “section HM 12(1)(a) and (b)(iv) and (v)”. 30

(3) **Subsections (1) and (2)** apply for the 2012–13 and later income years.

**45B Ending of New Zealand residence**

Section HM 24 is replaced by the following:

**“HM 24 Immediate loss of PIE status**

An entity loses PIE status immediately if it does not meet—

- “(a) the residence requirements of section HM 8: 5
- “(b) the requirements of section HM 9 about the nature of the entity:
- “(c) the requirements of section HM 17 concerning rights to investment proceeds.

“Defined in this Act: PIE”. 10

**45C When foreign PIE equivalent no longer meets requirements**

(1) Section HM 30(1), other than the heading, is replaced by the following:

- “(1) A foreign PIE equivalent loses its status immediately if— 15
  - “(a) it becomes resident in New Zealand:
  - “(b) it is treated under a double tax agreement as resident in New Zealand.”

(2) In section HM 30, in the list of defined terms, “double tax agreement” is inserted. 20

**46 Rules for and treatment of investors in multi-rate PIEs**

Section HM 32(3), other than the heading, is replaced by the following:

- “(3) An investor in a foreign investment PIE who notifies the PIE under section HM 55D(2) of their wish to become a notified foreign investor is treated as having notified the PIE of a tax rate under subsection (1).” 25

**47 Attribution periods**

(1) In section HM 34, in the words before paragraph (a), “a tax year” is replaced by “a tax year or an income year, as applicable,”. 30

(2) In section HM 34(b), “the tax year” is replaced by “the income year”.

(3) In section HM 34, in the list of defined terms, “income year” is inserted. 35

- (4) **Subsections (1) and (2)** apply for the 2010–11 and later income years.

**47B** Determining net amounts and taxable amounts

- (1) In section HM 35(3)(a), “received for the income:” is replaced by “received for the income but not including the amount of any supplementary dividends:”. 5
- (2) Subsection (1) applies for the 2013–14 and later income years.

**48** Treatment of certain provisions made by multi-rate PIEs

In section HM 35B(1)(b)(i), “portfolio” is omitted. 10

**48B** Determining amounts for notified foreign investors

- (1) After section HM 35C(4), the following is added:

*“Treatment of certain transitional residents*

- “(5) For the purposes of this section, a transitional resident who has chosen under section HM 55D(9) to use the specified prescribed investor rate is treated as if they were a notified foreign investor. 15

*“When subsection (7) applies*

- “(6) Subsection (7) applies for the purposes of section HM 35 for a notified foreign investor (a **qualifying investor**) in a foreign investment PIE who meets the requirements of section LP 2(1)(a) (Tax credits for supplementary dividends). It overrides subsections (2) and (3), and for the purposes of the calculation of amounts attributed to them, the qualifying investors are treated as a separate class. 20 25

*“Assessable income and supplementary dividends*

- “(7) For the purposes of section HM 35(3)(a), the assessable income of the PIE is the total amount of the PIE’s assessable income attributed to the class of qualifying investors for the attribution period, including any supplementary dividends to which the qualifying investors are entitled.” 30

- (2) In section HM 35C, in the list of defined terms, “prescribed investor rate” and “transitional resident” are inserted.

(3) **Subsection (1)** applies for the 2013–14 and later income years.

**49 Quarterly calculation option**

(1) In section HM 43(3), “as a zero-rated investor” is replaced by “as zero-rated”. 5

(2) In section HM 43, in the list of defined terms, “zero-rated investor” is omitted.

**49B NRWT calculation option**

(1) After section HM 44B(1), the following is inserted:

“When this section also applies: supplementary dividends 10

“(1B) This section also applies when—

“(a) a foreign investment PIE—

“(i) derives a dividend with imputation credits attached from a company resident in New Zealand together with a related supplementary dividend; and 15

“(ii) has, as an investor, a notified foreign investor who meets the requirements of section LP 2(1)(a) (Tax credits for supplementary dividends); and

“(iii) pays the investor an amount that represents the total amount of the dividend and supplementary dividend that would be attributed to the investor in the absence of subsection (2); and 20

“(iv) pays the amount by the date on which the PIE is required to pay its income tax liability under section HM 42 or HM 43, as applicable; and 25

“(b) the PIE chooses to calculate and pay the tax liability in relation to the amount under subpart RF.”

(2) In section HM 44B(2), “the amount represents an unimputed portion of the dividend” is replaced by “the amount represents either an unimputed portion of the dividend, or a dividend together with a related supplementary dividend, as applicable”. 30

(3) In section HM 44B(3), “represents an unimputed portion of the dividend” is replaced by “represents either an unimputed portion of the dividend, or a dividend together with a related supplementary dividend, as applicable”. 35

- (4) After section HM 44B(4), the following is added:  
“Relationship with section HM 35(8)
- “(5) When a foreign investment PIE derives a dividend and related supplementary dividend as described in **subsection (1B)**, the allocation rule set out in section HM 35(8) does not apply. 5  
The dividend and related supplementary dividend are treated as having been allocated on the date on which ownership of the shares determines a legal entitlement to the dividend.”
- (5) In section HM 44B, in the list of defined terms, “supplementary dividend” is inserted. 10
- (6) **Subsections (1) to (4)** apply for the 2013–14 and later income years.
- 50 Attributing credits to investors**
- (1) Section HM 50(1), other than the heading, is replaced by the following: 15
- “(1) This section applies when a multi-rate PIE has a tax credit other than a tax credit under subpart LS (Tax credits for multi-rate PIEs and investors).”
- (1B) After section HM 50(4), the following is added:
- “Supplementary dividends and foreign investment PIEs 20
- “(5) For the purposes of this section and for a payment of a dividend and related supplementary dividend to a foreign investment PIE, the dividend is treated as if it were divided into separate dividends as follows:
- “(a) a dividend of an amount that represents the part to which the notified foreign investors in the PIE who meet the requirements of **section LP 2(1)(a)** (Tax credits for supplementary dividends) are entitled; and 25
- “(b) a dividend of an amount that represents the remaining part to which all investors other than those referred to in **paragraph (a)** are entitled. 30
- “Imputation credits: first part
- “(6) The imputation credits for the dividend referred to in **subsection (5)(a)** are treated as attached to that part as if it were a separate dividend. 35

*“Imputation credits: second part*

- “(7) The imputation credits for the dividend referred to in **subsection (5)(b)** are treated as attached to that part as if it were a separate dividend not payable to a non-resident.”
- (2) In section HM 50, in the list of defined terms, “imputation credit” is omitted. 5
- (2) In section HM 50, in the list of defined terms, insert “foreign investment PIE”, “notified foreign investor”, and “supplementary dividend”.
- (3) **Subsection (1B)** applies for the 2013–14 and later income years. 10

**51 Use of foreign tax credits by PIEs**

- (1) In section HM 51(1)(c), “foreign investment PIE.” is replaced by “foreign investment PIE:” and the following is added:  
 “(d) a transitional resident who chooses under section HM 55D(8) to use a prescribed investor rate set out in schedule 6, table 1, row 10 (Prescribed rates: PIE investments and retirement scheme contributions).” 15
- (2) In section HM 51, in the list of defined terms, “prescribed investor rate” and “transitional resident” are inserted. 20
- (3) **Subsection (1)** applies for the 2013–14 and later income years.

**52 Use of tax credits other than foreign tax credits by PIEs**

- (1) In section HM 53(1)(b)(iii), “an imputation credit.” is replaced by “an imputation credit:” and the following is added: 25  
 “(iv) a transitional resident who chooses under section HM 55D(8) to use a prescribed investor rate set out in schedule 6, table 1, row 10 (Prescribed rates: PIE investments and retirement scheme contributions).” 30
- (2) In section HM 53, in the list of defined terms, “prescribed investor rate” and “transitional resident” are inserted.
- (3) **Subsection (1)** applies for the 2013–14 and later income years.

**52B** New section HM 55FB inserted

(1) After section HM 55F, the following is inserted:

**“HM 55FB Notified foreign investors and tax credits for supplementary dividends**

*“When this section applies”* 5

“(1) This section applies when—

“(a) a foreign investment PIE has an investment consisting of shares in a company resident in New Zealand; and

“(b) a notified foreign investor in the PIE is a non-resident who meets the requirements of section LP 2(1)(a) (Tax credits for supplementary dividends); and 10

“(c) the company has declared a dividend to be paid on a later date.

*“Notification by PIE*

“(2) The PIE must notify the company of the investors referred to in **subsection (1)(b)** who have an investor interest in the PIE on the date on which ownership of the shares determines a legal entitlement to the dividend. The PIE must provide the information before the date of payment of the dividend. 15

*“Sufficient information”* 20

“(3) The information provided by the PIE about the investor must be sufficient to enable the calculation and payment of a supplementary dividend to the PIE in relation to the investor.

*“Calculation and payment of supplementary dividend*

“(4) The company must use the information provided by the PIE in calculating and paying the supplementary dividend. 25

*“Defined in this Act: company, dividend, foreign investment PIE, investor interest, non-resident, notified foreign investor, pay, resident in New Zealand, share, supplementary dividend”.*

(2) **Subsection (1)** applies for the 2013–14 and later income years. 30

**53 Prescribed investor rates for certain investors: 0%**  
Section HM 57(d) is repealed.

**54 Use of investor classes' losses**

- (1) In section HM 64(3), “other than a zero-rated investor” is replaced by “other than a zero-rated investor or an investor treated under section HM 61 as zero-rated”.
- (2) Section HM 64(4), other than the heading, is replaced by the following: 5
- “(4) For a notified foreign investor in a foreign investment PIE, the amount is disregarded.”

**55 Use of land losses of investor classes**

- Section HM 65(5), other than the heading, is replaced by the following: 10
- “(5) For a notified foreign investor in a foreign investment PIE, the amount of land loss is disregarded.”

**55B Qualifying companies: transition into partnership**

- (1) In section HZ 4B(5), in the words before the paragraphs, “sub-section (2)” is replaced by “subsection (2) for the transitional income year and later years”. 15
- (2) Section HZ 4B(5)(a) is replaced by the following:
- “(a) for calculating amounts under section HG 11(5)(a) for shares that were held at the end of the income year (the last year) before the transitional income year, they may choose to use the market value or the accounting book value of those shares as at the end of the last year. Calculations under section HG 11(7)(b) and (8)(b) are changed to account for the valuation under this paragraph; or”. 20 25

**55C Qualifying companies: transition into look-through companies**

- (1) In section HZ 4C(2), in the words before the paragraphs, “the look-through company” is replaced by “the look-through company for the transitional income year and later years”. 30
- (2) Section HZ 4C(2)(a) is replaced by the following:
- “(a) for calculating amounts under section HB 11(5)(a) for shares that were held at the end of the income year (the last year) before the transitional income year, they 35

- may choose to use the market value or the accounting book value of those shares as at the end of the last year. Calculations under section HB 11(7)(b) and (8)(b) are changed to account for the valuation under this paragraph; or”. 5
- 56 Restrictions relating to schedular income**  
Section IA 8(1)(d) is repealed.
- 57 Meaning of charitable or other public benefit gift**  
In section LD 3, in the list of defined terms,—
- (a) “charitable or other public benefit” and “gift” are omitted: 10
- (b) “charitable or other public benefit gift” is inserted.
- 58 Repaid foreign tax: effect on income tax liability**
- (1) In section LJ 7(3)(b), “the foreign income” is replaced by “the foreign-sourced income”. 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 58B Tax credits for supplementary dividends**
- (1) After section LP 2(1)(a), the following is added: 20
- “(c) a foreign investment PIE if—
- “(i) a notified foreign investor (a **qualifying investor**) in the PIE meets the requirements of paragraph (a); and
- “(ii) an amount representing the dividend and the related supplementary dividend is attributed to the qualifying investor, or would be attributed to them in the absence of section HM 44B(2) (NRWT calculation option); and 25
- “(iii) the PIE notifies the company under **section HM 55FB** (Notified foreign investors and tax credits for supplementary dividends), providing the relevant information on those qualifying investors who have an entitlement to the dividend and related supplementary dividend.” 30

- (2) After section LP 2(3), the following is inserted:  
“When dividends derived by foreign investment PIEs  
“(3B) For the purposes of **subsection (1)(c)** and the calculation of  
the amount of the credit, the following apply in relation to a  
qualifying investor in a foreign investment PIE: 5  
“(a) the item **attached imputation credit** in the formula is  
the imputation credit that would, in the absence of this  
subpart, be attached to the portion of the dividend at-  
tributed to the investor:  
“(b) the relevant amount of the dividend and related supple-  
mentary dividend is treated as if it were paid by the com-  
pany directly to the investor: 10  
“(c) the investor’s voting interest in the company is treated  
as if it were a direct voting interest.”  
(3) **Subsections (1) and (2)** apply for the 2013–14 and later in-  
come years. 15

**59 Meaning of full-time earner for family scheme**

- (1) In section MA 7(2)(c), “leave.” is replaced by “leave:”, and  
the following is added:  
“(d) a person who receives or will receive weekly compen-  
sation from the Accident Compensation Corporation as  
a surviving spouse or partner of a deceased claimant is  
treated as being employed, during the week to which  
that compensation relates, for the number of hours that  
the deceased claimant would have been employed for in  
a week before dying, but for their incapacity. The num-  
ber of hours under this paragraph are in addition to the  
person’s own hours.” 20  
(2) In section MA 7(3), “subsection (2)(b)” is replaced by “ sub-  
section (2)(b) and (d)”. 30

**60 Adjustments for calculation of family scheme income**

In section MB 1, in the list of defined terms, “income state-  
ment” is omitted.

**61 Treatment of distributions from superannuation schemes**

(1) Section MB 5(2), other than the heading, is replaced by the following:

“(2) This section does not apply to a person who receives a distribution from a superannuation scheme— 5

“(a) as a result of and on or after the person’s retirement from employment with an employer who was a contributor to the scheme:

“(b) if the superannuation scheme is a KiwiSaver scheme or a complying superannuation fund.” 10

(2) In section MB 5, in the list of defined terms, “complying superannuation fund” and “KiwiSaver scheme” are inserted.

**62 Family scheme income from other payments**

After section MB 13(2)(k), the following is inserted:

“(kb) a payment of a foster care allowance under section 363 of the Children, Young Persons, and Their Families Act 1989.” 15

**63 Third requirement: residence**

Section MC 5(2)(a) is replaced by the following:

“(a) has been— 20

“(i) both a New Zealand resident and present in New Zealand for a continuous period of 12 months at any time; and

“(ii) resident in New Zealand under section YD 1 (Residence of natural persons) on the days for which a tax credit arises under section MD 1 (Abating WFF tax credit) or ME 1 (Minimum family tax credit); and” 25

**64 Third requirement: residence**

(1) Section MD 7(2)(a) is replaced by the following: 30

“(a) has been—

“(i) both a New Zealand resident and present in New Zealand for a continuous period of 12 months at any time; and

- “(ii) resident in New Zealand under section YD 1 (Residence of natural persons) on the days for which a tax credit arises under section MD 1; and”.
- (2) In section MD 7, in the list of defined terms, “resident” is omitted. 5
- 65 Fifth requirement: full-time earner**
- (1) In section MD 9(1), “receiving income from a work activity” is omitted.
- (2) Section MD 9(1) is replaced by the following: 10  
*“Normally full-time earner*
- “(1) The fifth requirement for an entitlement to an in-work tax credit is that either or both the person referred to in section MD 4 and their spouse, civil union partner, or de facto partner, is normally a full-time earner (the **earner**). Also, the earner must— 15
- “(a) derive income as set out in subsections (2) and (3) as a full-time earner or derive an amount of compensation described in subsection (4); or
- “(b) if they are a full-time earner in relation to a close company, be a major shareholder in the close company, and the company must derive gross income in the income year.” 20
- (3) In section MD 9, in the list of defined terms, “close company”, “income year”, and “major shareholder” are inserted. 25
- 66 Calculation of in-work tax credit**
- (1) In section MD 10(3)(d)(i), “refers” is replaced by “refers or is a full-time earner described in **section MD 9(1)(b)**”.
- (2) In section MD 10(3)(d)(ii), “paragraph” is replaced by “sub-paragraph”. 30
- (3) In section MD 10(3)(d)(ii), “refers” is replaced by “refers or is a full-time earner described in **section MD 9(1)(b)**”.

**66B General rules for companies with imputation credit accounts**

(1) In section OB 1(2)(a)(iv), “to CW 11” is replaced by “and CW 10”.

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2011. 5

**67 ICA payment of tax**

(1) After section OB 4(3)(g), the following is inserted:

“(gb) further income tax applied under section OC 34 (Further income tax paid satisfying liability for income tax) to pay income tax; or” 10

(2) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

**68 ICA payment of schedular income tax**

In section OB 29(1), “section CR 3, CV 16, or CV 17 (which relate to non-resident insurers, shippers, and film renters)” is replaced by “section CR 3 (Income of non-resident general insurer) or CV 16 (Non-resident shippers)” 15

**69 Payment of further income tax for closing debit balance**

(1) After section OC 30(2), the following is added: 20

*“FDP credit for payment under subsection (1)*

“(4) An FDPA company has an FDP credit for an amount of further income tax paid under subsection (1).”

(2) In section OC 30, in the list of defined terms, “FDP credit” is inserted. 25

(3) **Subsection (1)** applies for income years beginning on or after 1 July 2009.

**70 Payment of further income tax when company no longer New Zealand resident**

(1) After section OC 31(3), the following is added: 30

*“FDP credit for payment under subsection (1)*

“(5) A company that stops being an FDPA company has an FDP credit for an amount of further income tax paid under this section.”

- (2) In section OC 31, in the list of defined terms, “FDP credit” is inserted.
- (3) **Subsection (1)** applies for income years beginning on or after 1 July 2009.
- 71 BETA payment of income tax** 5
- (1) In section OE 7(6), “the total income tax liability for the attributed CFC income referred to in subsection (3)” is replaced by “the income tax liability for the income year of the company having the attributed CFC income”.
- (2) Section OE 7(7)(b) is replaced by the following: 10  
 “(b) **tax liability** is the income tax liability for the income year of the company having the attributed CFC income.”
- (3) Section OE 7(8) is repealed.
- 72 Consolidated ICA payment of schedular income tax** 15
- In section OP 27(1), “section CR 3, CV 16, or CV 17 (which relate to non-resident insurers, shippers, and film renters)” is replaced by “section CR 3 (Income of non-resident general insurer) or CV 16 (Non-resident shippers)”.
- 73 Consolidated BETA payment of income tax** 20
- (1) In section OP 101(4B), “the total income tax liability for the attributed CFC income referred to in subsection (1)” is replaced by “the income tax liability for the income year of the company or the consolidated BETA group having the attributed CFC income”. 25
- (2) Section OP 101(4C)(b) is replaced by the following:  
 “(b) **tax liability** is the income tax liability for the income year of the company or the consolidated BETA group having the attributed CFC income.”
- 74 Payment dates for terminal tax** 30
- (1) ~~Section RA 13(2)(a)(ii) is repealed.~~
- (2) ~~In section RA 13, in the list of defined terms, “income statement”<sup>22</sup> is omitted.~~

**74B Who is required to pay provisional tax?**

In section RC 3(2)(b), “referred to in section 33A(1)” is replaced by “who meets the requirements of **section 33AA(1)**”.

**74C Alternate rate option**

In section RD 59(4), “pay of each employee” is replaced by “FBT payable for each employee”.

**75 ESCT rules and their application**

- (1) In section RD 64(2), “employer who makes an employer’s superannuation contribution” is replaced by “employer or a person who makes an employer’s superannuation cash contribution”.
- (2) In section RD 64, in the list of defined terms, “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- (3) **Subsections (1) and (2)** do not apply for a tax position that is inconsistent with **subsections (1) and (2)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced.

**76 Employer’s superannuation cash contributions**

- (1) Section RD 65(1) is replaced by the following:  
*“Contribution in money for benefit of employees or past employees*  
“(1) An **employer’s superannuation cash contribution** means a superannuation contribution paid in money either to a superannuation fund or under the KiwiSaver Act 2006 to the Commissioner for later payment to a superannuation fund, if the contribution is—
  - “(a) an employer’s superannuation contribution:
  - “(b) made by a person for the benefit of 1 or more of their past employees.”
- (2) In section RD 65(3), “An employer who makes an employer’s superannuation cash contribution on behalf of an employee” is replaced by “An employer or person who makes an employer’s

- superannuation cash contribution on behalf of an employee or past employee”.
- (3) In section RD 65(3), “Subsection (4) overrides this subsection.” is omitted.
- (4) **Subsections (1) and (2)** do not apply for a tax position that is inconsistent with **subsections (1) and (2)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 5
- 77 Calculating amounts of tax for employer’s superannuation cash contributions 10**
- (1) In section RD 67(a), “if the employer” is replaced by “if, for a contribution that is an employer’s superannuation contribution, the employer”.
- (2) In section RD 67, in the list of defined terms, “employer’s superannuation contribution” is inserted. 15
- (3) **Subsections (1) and (2)** do not apply for a tax position that is inconsistent with **subsections (1) and (2)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 20
- 78 Section RD 67 replaced**
- Section RD 67 is replaced by the following:
- “RD 67 Calculating amounts of tax for employer’s superannuation cash contributions 25**
- The amount of tax for an employer’s superannuation cash contribution is—
- “(a) the amount determined under schedule 1, part D, clause 1 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits), unless **paragraph (b)** applies; or 30
- “(b) 33% of the employer’s superannuation cash contribution, if—
- “(i) the contribution is made by a person for the benefit of 1 or more of their past employees: 35

“(ii) an employer chooses 33% and the contribution is to a defined benefit fund.

“Defined in this Act: amount, amount of tax, defined benefit fund, employer, employer’s superannuation cash contribution”.

- 79 Choosing different rates for employer’s superannuation cash contributions** 5
- (1) In section RD 69(1), “on behalf of an employee” is replaced by “that is an employer’s superannuation contribution”.
- (2) In section RD 69, in the list of defined terms, “employer’s superannuation contribution” is inserted. 10
- (3) **Subsections (1) and (2)** do not apply for a tax position that is inconsistent with **subsections (1) and (2)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 15
- 80 Calculating amounts of tax on failure to withhold**
- (1) In section RD 70(1), “an employer” is replaced by “an employer, person,”.
- (2) **Subsection (1)** does not apply for a tax position that is inconsistent with **subsection (1)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 20
- 81 Amounts of tax treated as paid to and received by superannuation funds**
- (1) In section RD 71,— 25
- (a) in the words before the paragraphs, “an employer” is replaced by “an employer or a person”:
- (b) in paragraph (a), “the employer” is replaced by “the employer, the person,”.
- (2) **Subsection (1)** does not apply for a tax position that is inconsistent with **subsection (1)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 30

**82 Non-cash dividends other than bonus issues in lieu**

- (1) In section RE 14, the section heading is replaced by “**Non-cash dividends other than certain share issues**”.
- (2) Section RE 14(1), other than the heading, is replaced by the following: 5
  - “(1) This section applies when a person makes a payment of resident passive income that consists of a non-cash dividend other than—
    - “(a) a bonus issue in lieu:
    - “(b) a share issued under a profit distribution plan.” 10
- (3) In section RE 14, in the list of defined terms, “profit distribution plan” is inserted.

**83 Bonus issues in lieu**

- (1) In section RE 15, the section heading is replaced by “**Bonus issues in lieu and shares issued under profit distribution plans**”. 15
- (2) Section RE 15(1), other than the heading, is replaced by the following:
  - “(1) This section applies when a person makes a payment of resident passive income that consists of a dividend that is— 20
    - “(a) a bonus issue in lieu:
    - “(b) a share issued under a profit distribution plan.”
- (3) In section RE 15(2), “amount of tax for the payment” is replaced by “amount of tax for the payment that the person must pay under **subsection (4)**”. 25
- (4) Section RE 15(3)(b) is replaced by the following:
  - “(b) **alternative amount** is, as applicable,—
    - “(i) the net amount of money offered as an alternative to the bonus issue before the amount of tax is determined; or 30
    - “(ii) for a share issued under a profit distribution plan, the net amount offered by the company for the repurchase of the share before the amount of tax is determined.”
- (5) After section RE 15(3), the following is added: 35

*“Treatment as if amount of tax withheld*

- “(4) For the purposes of subsection (2), the person must pay to the Commissioner the amount calculated as if it were the amount of tax required to be withheld and paid under the RWT rules.”
- (6) In section RE 15, in the list of defined terms, “Commissioner”, “profit distribution plan”, and “RWT rules” are inserted. 5

**84 Non-resident passive income**  
Section RF 2(2)(b) is repealed.

**84B Certain dividends**

- (1) After section RF 8(1)(e), the following is added: 10
- “(g) an amount paid by a foreign investment PIE to a notified foreign investor under section HM 44B (NRWT calculation option) to the extent to which the amount represents the fully imputed portion of a dividend and the related supplementary dividend derived by the PIE.” 15
- (2) In section RF 8, in the list of defined terms, “foreign investment PIE” and “notified foreign investor” are inserted.
- (3) **Subsections (1) and (2)** apply for the 2013–14 and later income years.

- 85 Non-cash dividends** 20  
In section RF 10(5),—
- (a) in paragraph (b), “section CD 7(2) or CD 8(3)” is replaced by “section CD 7(2), **CD 7B(2)**, or CD 8(3)”:
- (b) in paragraph (d), “section CD 7(2) or CD 8(3)” is replaced by “section CD 7(2), **CD 7B(2)**, or CD 8(3)”. 25

**86 Section RF 11B replaced**

Section RF 11B is replaced by the following:

**“RF 11B Dividends paid by companies in certain situations**

The rate of NRWT payable on a payment of non-resident passive income in the form of a dividend paid by a company to a non-resident is— 30

- “(a) to the extent to which the payment is a fully-imputed dividend, 0% if—

- “(i) the non-resident has a direct voting interest in the company of 10% or more:
- “(ii) the non-resident does not have a direct voting interest in the company of 10% or more and, in the absence of this section, the post-treaty tax rate for the dividend would be less than 15% if no imputation credits were attached to the payment: 5
- “(b) to the extent to which the payment is not a fully-imputed dividend, the post-treaty tax rate for the dividend that, in the absence of this section, would apply if no imputation credits were attached to the payment. 10
- “Defined in this Act: company, direct voting interest, dividend, fully-imputed dividend, imputation credits, non-resident, non-resident passive income, NRWT, pay, post-treaty tax rate”.
- 87 Section RM 5 repealed** 15  
Section RM 5 is repealed.
- 87B Using refund to satisfy tax liability**  
In section RM 10(4), “section LA 7” is replaced by “section LA 7(1)(a)”. 15
- 88 Definitions** 20
- (1) This section amends section YA 1.
- (2) The definition of **bonus issue** is replaced by the following:  
“**bonus issue**,—
- “(a) means the issue of shares in a company, or the giving of credit for or forgiveness of an amount unpaid on any share in a company, if the company receives no consideration for the issue, crediting, or forgiveness other than the shareholder choosing not to receive an amount as an alternative to the issue: 25
- “(b) includes the issue of shares under a profit distribution plan”. 30
- (2B) In the definition of **deductible foreign equity distribution**, paragraph (a) is replaced by the following:
- “(a) for which a deduction is allowed in the calculation of the income tax imposed by a country or territory other than New Zealand on the income of the foreign company or 35

- on the income of a company in the same group as the foreign company:”.
- (3) In the definition of **deductible output tax**, in paragraph (a)(iii), “of that Act; and” is replaced by “of that Act:” and the following is inserted: 5  
     “(iv) section 21I(1) to (3) of that Act; and”.
- (4) In the definition of **dividend**, paragraph (b) is replaced by the following:  
     “(b) in the RWT rules, does not include a dividend of the kind listed in section RE 2(5) (Resident passive income) and modified by section RE 2(6), as applicable.” 10
- (5) In the definition of **employee**, paragraph (c)(i), “(3)” is replaced by “(3), (3B)”.
- (6) In the definition of **employer**,—  
     (a) in paragraph (b)(iib), “to the extent that paragraph (db) of the definition of **employee** does not apply” is omitted: 15  
     (b) in paragraph (c)(i), “(3)” is replaced by “(3), (3B)”.
- (7) In the definition of **employment income**, “employment)” is replaced by “employment), and includes salary or wages or other income to which section RD 3(2) to (4) (PAYE income payments) applies”. 20
- (7B) In the definition of **fixed-rate share**, paragraph (a), “share cancellations), GC 8” is replaced by “share cancellations), **CX 55(4)** (Proceeds from disposal of investment shares), GC 8”. 25
- (8) In the definition of **flat-owning company**, “and section HA 6 (Corporate requirements)” is replaced by “, section HA 6 (Corporate requirements), and the definition of **look-through company**”. 30
- (8B) In the definition of **foreign investment variable-rate PIE**, “(Requirements for” is replaced by “(Modified rules for”.
- (8C) In the definition of **foreign investment zero-rate PIE**, “(Requirements for foreign investment variable-rate PIEs)” is replaced by “(Modified rules for foreign investment zero-rate PIEs)”. 35
- (8D) The definition of **forestry business** is replaced by the following:

- “forestry business includes forestry activities carried on by a person for the purpose of deriving income in relation to an emissions unit”.
- (8E) In the definition of **fully imputed**, paragraph (a), “RF 8, and RF 10” is replaced by “RF 8, RF 10, and **schedule 6, table 1B**”. 5
- (8F) The following is inserted in the appropriate alphabetical order: “**guarantor** is defined in **section HB 11(12)** (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section”. 10
- (8G) The definition of **guarantor** is replaced by the following: “**guarantor** is defined in—
- “(a) **section HB 11(12)** (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section: 15
- “(b) **section HG 11(12)** (Limitation on deductions by partners in limited partnerships) for the purposes of that section”.
- (9) In the definition of **hire purchase agreement**, paragraph (a)(i) is replaced by the following: 20
- “(i) an agreement under which goods are let or hired with an option to purchase.”.
- (10) In the definition of **hire purchase agreement**, in paragraph (d), “(a) or (b)” are replaced by “(a)(i) or (a)(ii)”.
- (11) The definition of **income statement** is repealed. 25
- (11B) The definition of **life insurance rules** is repealed.
- (11C) In the definition of **local authority**, after paragraph (b)(ix), the following is added:
- “(x) the Auckland Council Independent Maori Statutory Board established by section 81 of the Local Government (Auckland Council) Act 2009”. 30
- (11D) In the definition of **market value interest**, paragraph (a), “control and ownership interests” is replaced by “company ownership”.
- (11E) In the definition of **new start grant**, paragraph (b) is replaced by the following: 35
- “(b) paid by the Government of New Zealand to a person”.

- (12) The definition of **non-filing taxpayer**, paragraph (a), is replaced by the following:
- “(a) a person who—
    - “(i) meets the requirements of **section 33AA(1) or 33G** of the Tax Administration Act 1994; and
    - “(ii) does not choose to make a return of income under **section 33AA(4)** of that Act; or”.
- (12) In the definition of **non-filing taxpayer**, paragraph (a), “to whom section 33A(1) of the Tax Administration Act 1994 applies” is replaced by “who meets the requirements of **section 33AA(1)** of the Tax Administration Act 1994”.
- (12B) In the definition of **option**, “control and ownership interests” is replaced by “company ownership”.
- (12C) The following is inserted in the appropriate alphabetical order:
- “**owner’s associate** is defined in **section HB 11(12)** (Limitation on deductions by persons with interests in look-through companies) for the purposes of that section”.
- (12D) In the definition of **ownership interest**, “and section YC 18B (Corporate reorganisations not affecting economic ownership)” is replaced by “, and in sections YC 18B and **YC 19B** (which relate to corporate reorganisations)”.
- (12E) In the definition of **portfolio investment entity**, after paragraph (d), the following is added:
- “(e) a foreign investment PIE that is either a foreign investment zero-rate PIE or a foreign investment variable-rate PIE”.
- (13) In the definition of **pre-1990 forest land emissions unit**, paragraph (b) is replaced by the following:
- “(b) to another person (the **appointee**), as a person appointed under section 73 of that Act or as a person representing iwi that are claimants under a Treaty of Waitangi settlement, and—
    - “(i) transferred by the appointee to the person, as a person (the **claimant**) who at the time of the transfer to the appointee is a claimant under a Treaty of Waitangi settlement involving the pre-

- 1990 forest land or as an agent for the claimant;  
and  
“(ii) held continuously by the person, as the agent  
or the claimant, from the transfer by the ap-  
pointee.”. 5
- (14) The following is inserted in the appropriate alphabetical ~~pos-  
ition~~ order:  
“**profit distribution plan** means a scheme comprising 1 or  
more steps undertaken by a company by which it—  
“(a) notifies all shareholders that shares are to be issued on 10  
a particular date; and  
“(b) gives those shareholders an option to have some or all of  
the shares issued to them repurchased by the company  
“**profit distribution plan**—  
“(a) means a scheme comprising 1 or more steps undertaken 15  
by a company by which it—  
“(i) notifies some or all of its shareholders that shares  
are to be issued on a particular date; and  
“(ii) gives the notified shareholders an option to have 20  
some or all of the shares issued to them repur-  
chased by the company:  
“(b) does not include an issue of shares under a share pur-  
chase agreement or a share purchase scheme”.
- (14B) The following is inserted in the appropriate alphabetical 25  
order:  
“**recourse property** is defined in **section HB 11(12)** (Limi-  
tation on deductions by persons with interests in look-through  
companies) for the purposes of that section”.
- (14C) The definition of **recourse property** is replaced by the fol- 30  
lowing:  
“**recourse property** is defined in—  
“(a) **section HB 11(12)** (Limitation on deductions by per-  
sons with interests in look-through companies) for the  
purposes of that section:  
“(b) **section HG 11(12)** (Limitation on deductions by part- 35  
ners in limited partnerships) for the purposes of that sec-  
tion”.

- (15) In the definition of **relative**, in paragraph (a), in the words before the subparagraphs, “rule),” is replaced by “rule) and the definition of **look-through company**,”.
- (16) In the definition of **relative**, after paragraph (b), the following is inserted: 5  
“(bb) in the definition of **look-through company**, means a person connected with another person by any of the means described in paragraph (a)(i) to (iv):”.
- (17) In the definition of **schedular income**, paragraph (h) is repealed. 10
- (17B) In the definition of **share purchase agreement**, “and HC 27(3B) (Who is a settlor?) and section EX 38 (Exemption for employee share purchase scheme of grey list company)” is replaced by “, EX 38 (Exemption for employee share purchase scheme of grey list company), HC 27B(3B) (Who is a settlor?), and the definition of **profit distribution plan**”. 15
- (17C) In the definition of **superannuation scheme**, paragraph (a)(iv), “Social Security Act 1964” is replaced by “New Zealand Superannuation and Retirement Income Act 2001”.
- (18) In the definition of **taxable bonus issue**, the following is added after paragraph (d): 20  
“(e) a bonus issue that is a share issued under a profit distribution plan”.
- (18B) In the definition of **taxed CFC connection**, paragraph (a), “countries” is replaced by “companies”. 25
- (18C) In the definition of **voting interest**, paragraph (a), “control and ownership interests” is replaced by “company ownership”.
- (19) **Subsections (4) and (7)** apply for the 2008–09 and later income years.
- ~~(20) **Subsections (9) and (10)** do not apply for a tax position that is inconsistent with **subsections (9) and (10)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced.~~ 30
- (21) **Subsections (15) and (16)** apply for income years beginning on or after the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act **2011** receives the Royal assent. 35

~~(22)~~ **Subsections (11) and (12)** apply for the 2014–15 and later tax years.

**88B** When sections YC 8 to YC 19 apply

In section YC 7, in both the heading and the subsection, “YC 19” is replaced by “YC 19B”.

5

**89** **Reverse takeovers**

~~(1)~~ In section YC 18(6), “as determined under section” is replaced by “determined by applying section” in each place where it appears.

In section YC 18(6),—

10

(a) “this section” is replaced by “this section and **section YC 19B**”:

(b) “as determined under section” is replaced by “determined by applying section” in each place where it appears.

15

**90** **Corporate reorganisations not affecting economic ownership**

In section YC 18B(2)(c), “the initial percentage” is replaced by “the initial percentage”.

**90B** New section YC 19B

20

After section YC 19, the following is inserted:

**“YC 19B Treatment when certain trusts terminated**

*“When this section applies*

~~“(1)~~ This section applies when—

~~“(a)~~ a trust established for the sole benefit of the New Zealand government or an overseas government is terminated; and

25

~~“(b)~~ all the ownership interests held by the trustees of the trust in a company are transferred to the government beneficiary.

30

*“Date of acquisition of shares*

~~“(2)~~ The government beneficiary is treated as acquiring the ownership interests transferred by the trustees on the date the trustees acquired the ownership interests.

“Definition

“(3) In this section, **ownership interest** has the meaning given in section YC 18(6).

“Defined in this Act: company, New Zealand, ownership interest, trustee”.

- 91 Apportionment of income from sea transport** 5  
In section YD 6(4), “section DW 3 (Non-resident general insurers, shippers, and film renters)” is replaced by “**section DW 3** (Non-resident general insurers and shippers)”.
- 92 Section YD 7 repealed** 10  
Section YD 7 is repealed.
- 93 Apportionment of premiums derived by non-resident general insurers**  
In section YD 8(3)(a), “section DW 3 (Non-resident general insurers, shippers, and film renters)” is replaced by “**section DW 3** (Non-resident general insurers and shippers)” 15
- 94 Schedule 1—Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits**
- (1) In Part A, clause 1, “clauses 2 to 8” is replaced by “clauses 2 to **9**”.
- (2) In Part A, the following is added after clause 8: 20  
**“9 Investment income from portfolio investment entities**  
The basic rate of income tax for a person who is an investor in a PIE on each dollar of income attributed by the PIE is the rate set out in schedule 6 as notified by the person to the PIE.”
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 25
- (1) In schedule 1, part A, clause 1, “clauses 2 to 9” is replaced by “clauses 2 to 8”.
- (2) Schedule 1, part A, clause 9 is repealed.
- (3) In schedule 1, part A, clause 1, “clauses 2 to 8” is replaced by “clauses 2 to **9**” 30
- (4) In schedule 1, part A, the following is added after clause 8:

**“9** **Investment income from portfolio investment entities**

The basic rate of income tax for a person who is an investor in a PIE on each dollar of income attributed by the PIE is the rate set out in schedule 6 as notified by the person to the PIE.”

(5) In schedule 1, part A, “clauses 2 to **9**” is replaced by “clauses 2 to **10**”. 5

(6) In schedule 1, part A, the following is added after **clause 9**:

**“10** **Taxable income: New Zealand Superannuation Fund**

The basic rate of income tax on each dollar of taxable income derived by the Crown through the New Zealand Superannuation Fund is the rate applying to companies set out in clause 2.” 10

(7) **Subsections (3) and (4)** apply for the 2008–09 and later income years.

(8) **Subsections (5) and (6)** apply for the 2011–12 and later income years. 15

**95** **Schedule 6—Prescribed rates: PIE investments and retirement scheme contributions**

(1) In schedule 6, table 1, row 8 is replaced by the following:

8	For a person who is a zero-rated investor or an investor treated under section HM 61 as zero-rated.	0.000
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(2) In schedule 6, table 1B, row 2, “rows 1, and 3 to 5,” is replaced by “rows 1, 3 to 5, and 7.” 20

(3) Schedule 6, table 1B, is replaced by the following:

<u>Row</u>	<u>Amounts</u>	<u>Pre-scribed rate</u>
<u>1</u>	<u>To the extent to which it is not fully imputed, a dividend derived from a company resident in New Zealand attributed to an investor who does not reside in a country with which New Zealand has a double tax agreement.</u>	<u>0.3000</u>
<u>2</u>	<u>An amount other than an amount referred to in rows 1, 3 to 7, and 9 that has a source in New Zealand.</u>	<u>0.2800</u>

3	<u>To the extent to which it is not fully imputed, a dividend derived from a company resident in New Zealand attributed to an investor who resides in a country with which New Zealand has a double tax agreement.</u>	0.1500
4	<u>A fully imputed dividend derived from a company resident in New Zealand in relation to which a supplementary dividend is paid.</u>	0.1500
5	<u>A supplementary dividend.</u>	0.1500
6	<u>Interest derived under a financial arrangement, being an amount referred to in the definition of interest, paragraph (a) or (b), that has a source in New Zealand and is of an amount calculated under subpart EW.</u>	0.0144
7	<u>A fully imputed dividend derived from a company resident in New Zealand, other than a dividend in relation to which a supplementary dividend is paid.</u>	0.0000
8	<u>A foreign-sourced amount.</u>	0.0000
9	<u>An amount derived under a financial arrangement that has a source in New Zealand other than an amount of interest referred to in row 4.</u>	0.0000

(4) **Subsection (3)** applies for the 2013–14 and later income years.

**95B Schedule 19—Expenditure in avoiding, remedying, or mitigating detrimental effects of discharge of contaminant**  
In schedule 19, part B, clause 7, “, incurred in the cessation of a business,” is omitted.

5

**96 Schedule 28—Requirements for complying fund rules**

- (1) In schedule 28, clause 7, “2%” is replaced by “3%”.
- (2) **Subsection (1)** applies for payments of salary or wages for pay periods beginning on or after 1 April 2013.

10

**97 Schedule 29—Portfolio investment entities: listed investors**

In schedule 29, part A, the following is added:

- 10 Quayside Holdings Limited.

- 98 Schedule 32—Recipients of charitable or other public benefit gifts**
- (1) In schedule 32,—
- (a) after the entry for “Alhay Buhay Foundation Trust”, an entry for “Aotearoa Development Cooperative” is inserted: 5
  - (b) after the entry for “Cyclone Val Relief Fund”, an entry for “Deepavali Charitable Trust” is inserted:
  - (c) after the entry for “Operation Vanuatu Charitable Trust”, an entry for “Orphans of Nepal” is inserted: 10
  - (d) after the entry for “Save the Children New Zealand (and its branches)”, an entry for “School Aid: Global Partnerships Though Schools” is inserted.
- (2) **Subsection (1)** applies for the 2013–14 and later income years. 15

### Part 3

#### Amendments to Tax Administration Act 1994

- 99 Tax Administration Act 1994**  
This Part amends the Tax Administration Act 1994. 20
- 100 Interpretation**
- (1) This section amends section 3.
- (2) ~~The definition of **income statement** is repealed.~~
- (3) The definition of **petroleum permit** is replaced by the following: 25  
“**petroleum permit**, in section 91 of this Act, means—  
“(a) a petroleum permit under section OB 1 of the Income Tax Act 2004;  
“(b) a replacement permit under section OB 1 of that Act”.
- (4) In the definition of **petroleum permit**,— 30  
(a) in **paragraph (a)**, “OB 1 of the Income Tax Act 2004” is replaced by “YA 1 of the Income Tax Act 2007”;  
(b) in **paragraph (b)**, “OB 1” is replaced by “YA 1”.
- (5) ~~In the definition of **tax position**, paragraph (4) is repealed.~~

- (5) In the definition of **tax position**, in paragraph (m), “section 33A(1)” is replaced by “**section 33AA**”.
- (6) The definition of **taxpayer’s tax position** is replaced by the following:  
“**taxpayer’s tax position** means a tax position taken by a taxpayer in or for a tax return or for a due date”.
- (7) **Subsection (3)** applies for the 2005–06 and later income years. However, **subsection (3)** does not apply to a person in relation to a tax position taken by the person—
- (a) in the period from 1 April 2005 to the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill; and
  - (b) relating to the treatment of a petroleum permit or replacement permit; and
  - (c) relying on the definition of **petroleum permit** as it was before the amendment made by **subsection (3)**.
- (8) **Subsection (4)** applies for the 2008–09 and later income years.
- 101 Construction of certain provisions**  
Section 4A(1)(ca) is repealed.
- 102 Taxpayer’s tax obligations**  
Section 15B(h) and (i) are repealed.
- 103 Keeping of business and other records**
- (1) In section 22(2),—
    - (a) in paragraph (c), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”;
    - (b) ~~in the words following paragraph (fb) and before paragraph (g), “in New Zealand” is omitted:~~
    - (b) in the words following paragraph (fb) and before paragraph (g), “in New Zealand sufficient records in the English language” is replaced by “sufficient records”:
    - (c) in paragraph (l), “employer’s superannuation contribution” is replaced in each place where it appears by “employer’s superannuation cash contribution”:

- (d) in the words after paragraph (m), “in New Zealand” is omitted and the proviso is repealed.
- (2) After section 22(2), the following is inserted:
- “(2BA) A taxpayer required by subsection (2) to keep and retain a record must keep and retain the record— 5
- “(a) in English, or in a language in which the Commissioner authorises the taxpayer under **subsection (8)** to keep the record or the type of record; and
- “(b) at a place in New Zealand, or at a place outside New Zealand where— 10
- “(i) ~~at a place outside New Zealand where~~ the Commissioner authorises the taxpayer under **subsection (8)** to keep the record or the type of record:
- “(ii) ~~at the place where~~ the record is kept by a person authorised by the Commissioner under **subsection (8)** to keep records for taxpayers that include the taxpayer.”
- (2B) In section 22(3), “to whom section 33A applies” is replaced by “who meets the requirements of **section 33AA(1)**, or is issued an income statement or required to request or be issued an income statement.”. 20
- (3) After section 22(7), the following is added:
- “(8) The Commissioner may, upon application in writing by the taxpayer or person, authorise for the purposes of **subsection (2BA)**,— 25
- “(a) a taxpayer to keep and retain a record or type of record—
- “(i) in a language other than English:
- “(ii) at a place outside New Zealand:
- “(b) a person to hold, for taxpayers, records ~~in electronic form—~~ 30
- “(i) at places ~~in or~~ outside New Zealand; and
- “(ii) ~~meeting the requirements of section 25 of the Electronic Transactions Act 2002 for each taxpayer and record of the taxpayer.~~ 35
- “(ii) in a form approved by the Commissioner; and
- “(iii) accessible by the Commissioner in a way approved by the Commissioner.

- “(9) The Commissioner may, for an authorisation under **subsection (8)(b)** of a person,—
- “(a) impose reasonable conditions on the authorisation:
  - “(b) reasonably vary the conditions on the authorisation:
  - “(c) withdraw the authorisation, upon request by the person 5  
or after giving reasonable notice of the withdrawal:
  - “(d) give public notice of an action under **subsection (8)(b)**  
or this subsection, in a publication chosen by the Commissioner.”
- 104 Keeping of returns where information transmitted electronically** 10
- Section 23(1) is replaced by the following:
- “(1) Where information contained in a taxpayer’s return has been transmitted by electronic means in the prescribed electronic format in accordance with section 36, the taxpayer shall retain 15  
or cause to be retained—
- “(a) the return in the form of—
    - “(i) a signed hard-copy transcript of the information transmitted:
    - “(ii) an electronic form meeting the requirements of 20  
section 25 of the Electronic Transactions Act 2002; and
  - “(b) for a period of—
    - “(i) 7 years after the end of the income year to which 25  
the return relates; or
    - “(ii) a greater period that the Commissioner requires  
under section 22 for other records of the taxpayer,  
if the Commissioner gives the taxpayer notice of  
a further retention period under section 22(5).”
- 105 RWT withholding certificates** 30
- (1) Section 25(10)(e) is replaced by the following:
- “(e) is made available electronically to the recipient or to a person authorised to act on behalf of the recipient and the recipient or the authorised person agrees to having the certificate made available in this way.” 35

- (2) **Subsection (1)** applies to RWT withholding certificates provided on or after 1 April 2002 that relate to interest or specified dividends paid in the 2001–02 and subsequent income years.

**105B Shareholder dividend statement to be provided by company** 5

In section 29(2)(d), “business.” is replaced by “business; or” and the following is added:

- “(e) is made available electronically to the shareholder or to a person authorised to act on behalf of the shareholder and the shareholder or the authorised person agrees to having the shareholder dividend statement made available in this way.” 10

**105C Maori authority to give notice of amounts distributed**

- (1) In section 31(2)(b), “is” is omitted.  
 (2) In section 31(2)(c), “is” is omitted. 15

- (3) Section 31(2)(d), is replaced by the following:

“(d) sent by post to the authorised person at their last known place of abode or business; or

- “(e) made available electronically to the member or to a person authorised to act on behalf of the member and the member or the authorised person agrees to having the notice made available in this way.” 20

**105D Returns of income**

In section 33(1), “a taxpayer to whom section 33A applies” is replaced by “a person who meets the requirements of **section 33AA(1)**, or is issued an income statement or required to request or be issued an income statement.” 25

**106 New section 33AA inserted**

- (1) After section 33, the following is inserted:

**“33AA Exceptions to requirement for return of income** 30

- “(1) A natural person is not required to furnish a return of income for a tax year if, for the corresponding income year, the person—

“(a) derives no assessable income other than—

- “(i) income of a type referred to in **subsection (2)**, including a total of \$200 or less of amounts referred to in **subsection (3)**; and
- “(ii) a total of \$200 or less of income of a type not referred to in **subsection (2)**; and 5
- “(b) derives no income from employment for which an amount of tax that is withheld or deducted is determined under a special tax code certificate issued under section 24F; and
- “(c) ~~derives no schedular payment, except if—~~ 10
- “(i) ~~the schedular payment is an amount or proportion of an amount for which the Commissioner has made a determination under section RD 8(3) of the Income Tax Act 2007;~~
- “(ii) ~~the schedular payment is income that is a personal service rehabilitation payment for a claimant under the Accident Compensation Act 2001;~~ 15
- “(iii) ~~the total income of the person is \$200 or less; and~~
- “(d) ~~derives no beneficiary income; except if the total income of the person is \$200 or less; and~~ 20
- “(c) has total income of \$200 or less or derives no schedular payment other than an amount or proportion of an amount for which the Commissioner has made a determination under section RD 8(3) of the Income Tax Act 2007; and 25
- “(d) has total income of \$200 or less or derives no beneficiary income; and
- “(db) derives no income for providing personal services to a claimant under the Accident Compensation Act 2001 or meets the requirements of section 33C; and 30
- “(e) is at all times—
- “(i) a New Zealand resident;
- “(ii) a non-resident deriving no income with a source in New Zealand other than non-resident passive 35  
income referred to in section RF 2(3) of the Income Tax Act 2007; and
- “(f) is not a provisional taxpayer; and
- “(g) is a cash basis person; and

- “(h) has no tax loss balance or tax loss component, other than a tax loss component under section LE 2 of the Income Tax Act 2007; and
  - “(i) has no loss balance; and
  - “(j) has not carried forward to the tax year a tax credit under section LE 3 of the Income Tax Act 2007; and 5
  - “(k) at no time holds an RWT exemption certificate under section 32E; and
  - “(l) is not required under section 44 to furnish a return of income; and 10
  - “(m) is not considered by the Commissioner to be a person who should furnish a return of income.
- “(2) The types of income relevant to **subsections (1)(a)(i) and (ii)** for a person and an income year are—
- “(a) income from employment that is subject to the PAYE rules: 15
  - “(b) interest or a dividend that is subject to the RWT rules:
  - “(c) interest or a dividend that does not have a New Zealand source:
  - “(d) a taxable Maori authority distribution: 20
  - “(e) a personal service rehabilitation payment for a claimant under the Accident Compensation Act 2001.
- “(3) The amounts relevant to **subsection (1)(a)(i)** for a person and an income year are—
- “(a) an amount of income for which the obligations under the PAYE rules, of the employer or PAYE intermediary making the payment, are not met: 25
  - “(b) an amount of income from which the combined tax and earner-related payment is not withheld correctly:
  - “(c) an amount of interest or a dividend that is resident passive income to which section RE 3(1)(c) of the Income Tax Act 2007 applies, other than interest for which an RWT withholding certificate was not required under section 25(7), and from which RWT is withheld at a rate other than— 30
    - “(i) 0.175, if the person’s annual gross income is more than \$14,000 and not more than \$48,000; or 35

- “(ii) 0.300, if the person’s annual gross income is more than \$48,000 and not more than \$70,000; or
- “(iii) 0.330, if the person’s annual gross income is more than \$70,000: 5
- “(d) an amount of income from employment that is an extra pay from which tax is withheld at a rate other than—
  - “(i) 0.175, if the person’s annual gross income is more than \$14,000 and not more than \$48,000; or 10
  - “(ii) 0.300, if the person’s annual gross income is more than \$48,000 and not more than \$70,000; or
  - “(iii) 0.330, if the person’s annual gross income is more than \$70,000: 15
- “(e) an amount of income from employment that is secondary employment earnings from which tax is withheld at a rate other than—
  - “(i) 0.175, if the person’s annual gross income is more than \$14,000 and not more than \$48,000; or 20
  - “(ii) 0.300, if the person’s annual gross income is more than \$48,000 and not more than \$70,000; or
  - “(iii) 0.330, if the person’s annual gross income is more than \$70,000: 25
- “(f) a taxable Maori authority distribution if the person’s annual gross income is more than \$48,000:
- “(g) an amount of interest, a dividend, or a taxable Maori authority distribution if the person is required to pay financial support in the tax year under the Child Support Act 1991: 30
- “(h) an amount of interest or a dividend that does not have a New Zealand source and is not resident passive income to which section RE 3(1)(c) of the Income Tax Act 2007 applies: 35
- “(i) an amount of salary or wages from employment as an election day worker, if the worker has used the ‘EDW’ tax code:

- “(j) an amount of salary or wages from employment as casual agricultural employee, if the worker has used the ‘CAE’ tax code.
- “(4) ~~A person who is not required to furnish a return of income for a tax year may choose to furnish a return of income for the tax year if the person also furnishes a return of income for each tax year, of the 4 immediately preceding tax years,—~~ 5
- ~~“(a) beginning on or after 1 April 2014; and~~
- ~~“(b) for which the person—~~
- ~~“(i) is not required to furnish a return of income, except under this subsection; and~~ 10
- ~~“(ii) has not previously furnished a return of income.~~
- “(4) A person who is not required to furnish a return of income for a tax year may choose to furnish a return of income for the tax year if the person furnishes a return of income for each of the 5 tax years, immediately preceding the tax year in which the Commissioner receives the returns,— 15
- “(a) beginning on or after the earlier of 1 April 2016 and the first day of the first tax year to which this section applies; and 20
- “(b) for which the person—
- “(i) is not required to furnish a return of income, except under this subsection; and
- “(ii) has not previously furnished a return of income.
- “(5) If a person is required by **subsection (4)** to make more than one return of income,— 25
- “(a) the person is treated as having, for the period of tax years to which the returns relate (the **return years**), an overall amount of unpaid tax payable by the person, or of overpaid tax owing to the person as a refund, determined by treating terminal tax for the tax year of a return as a liability of the person and overpaid tax for the tax year of a return as a credit of the person; and 30
- “(b) an overall amount of unpaid tax for the return years is treated as tax payable by the person and due on the later of the following: 35
- “(i) the day specified by the Commissioner in the notice to the person requiring the payment of the overall amount to the Commissioner:

- “(ii) 60 days after the date of the notice.
- “(6) If a person makes a return of income under **subsection (4)** for a tax year, in relation to the period beginning with the due date for payment of tax for the tax year and ending with the latest date on which the Commissioner receives from the person a return required by **subsection (4)**,— 5
- “(a) the person is not liable to pay interest under Part 7, or a late payment penalty under section 139B, in relation to tax for the tax year that the person would not be liable to pay in the absence of the return: 10
- “(b) the Commissioner is not liable to pay interest under Part 7 in relation to tax for the tax year overpaid by the person.”
- (2) **Subsection (1)** applies for the 2014–15 and later tax years.
- (2) **Subsection (1)** applies for the 2016–17 tax year, or earlier tax year set by Order in Council, and later tax years. 15
- 107 Annual returns of income not required**  
Section 33A(1)(b)(via) is repealed.
- 108 Section 33A repealed** 20
- (1) Section 33A is repealed.
- (2) **Subsection (1)** applies for the 2014–15 and later tax years.
- (2) **Subsection (1)** applies for the 2016–17 tax year, or earlier tax year set by Order in Council, and later tax years.
- 109 Return not required for certain providers of personal services** 25
- (1) In section 33C(d), “section 33A(1)” is replaced by “**section 33AA(1)**”:
- (1) In section 33C(d), “the person is not required to furnish a return of income under section 33A(1)” is replaced by “the person meets the requirements of **section 33AA(1)**”. 30
- (2) **Subsection (1)** applies for the 2014–15 and later tax years.
- (2) **Subsection (1)** applies for the 2016–17 tax year, or earlier tax year set by Order in Council, and later tax years.

**109B** New section 33D inserted

(1) After section 33C, the following is inserted:

**“33D** Return not required for non-resident seasonal worker

A person who is a non-resident seasonal worker in an income year corresponding to a tax year is not required to furnish a return of income for the tax year and will not receive an income statement from the Commissioner for the year.” 5

(2) **Subsection (1)** applies for the 2016–17 tax year, or earlier tax year set by Order in Council, and later tax years.

**110** Commissioner may approve furnishing of return information by electronic means 10

Section 36(3)(a) to (ba) are replaced by the following:

“(a) the taxpayer or registered person shall retain or cause to be retained the information in—

“(i) a hard-copy transcript: 15

“(ii) an electronic form meeting the requirements of section 25 of the Electronic Transactions Act 2002; and

“(b) if no electronic form under **paragraph (a)(ii)** of a return is retained, and the return is not an employer monthly schedule or annual reconciliation statement under section 57B, the hard-copy transcript must be signed by the taxpayer or registered person, or their agent, under section 40 and held by the taxpayer or registered person on behalf of the Commissioner; and”. 20 25

**110B** Returns to annual balance date

In section 38(1), “taxpayer to whom section 33A(1) or (5) applies” is replaced by “person who meets the requirements of **section 33AA(1)**, or is issued an income statement or required to request or be issued an income statement.”. 30

**111** Annual returns by persons who receive family assistance credit

(1) Section 41(4) is replaced by the following:

- “(4) Whether or not the person derived income in the tax year, the person must furnish to the Commissioner a return for the tax year, in the form prescribed by the Commissioner, providing—
- “(a) details of each family assistance credit paid to the person in the tax year; and 5
  - “(b) the information relevant to the calculation of the person’s family scheme income for the tax year; and
  - “(c) other information required by the Commissioner.”
- (2) Section 41(5) is repealed.
- ~~(3) **Subsections (1) and (2)** apply for the 2014–15 and later tax years.~~ 10
- (3) **Subsections (1) and (2)** apply for the 2016–17 tax year, or earlier tax year set by Order in Council, and later tax years.
- 112 Income tax returns and assessments by executors or administrators** 15
- ~~⊕ Section 43(4) and (5) are repealed.~~
- (1) In section 43(4), “a person to whom section 33A(5) refers” is replaced by “required under section 80D(2) to apply for an income statement”.
- (2) In section 43(5), “been a person to whom section 33A(1) applied” is replaced by “met the requirements of **section 33AA(1)**”. 20
- 113 ESCT statements provided by employers**
- (1) In the heading to section 47, “**employers**” is replaced by “**employers and others**”. 25
- (2) In section 47(1) “employer or PAYE intermediary withholds in a period an amount of ESCT from an employer’s superannuation contribution” is replaced by “employer, person, or PAYE intermediary withholds in a period an amount of ESCT from an employer’s superannuation cash contribution”. 30
- 113B RWT withholding reconciliation statements**
- In section 51(7), “dividend that to which section RE 3(c)” is replaced by “dividend to which section RE 3(1)(c)”.

**113C** **Return requirements for multi-rate PIEs**

After section 57B(5), the following is inserted:

“(5B) Despite subsection (5), a foreign investment zero-rate PIE is not required to carry out the responsibilities in relation to exiting investors as described in subsection (5) for a tax year if the only exiting investors of the PIE in the tax year are notified foreign investors. Instead, the PIE must provide the required information in its return for the tax year.” 5

**114** **Part 3A repealed**

~~Part 3A is repealed.~~ 10

**114B** **Application**

(1) Section 80A(1)(a) is replaced by the following:

“(a) is a person who—

“(i) is not exempted under **section 33AA** from the requirement to furnish an annual return of income; and 15

“(ii) meets the requirements of **section 33AA(1)(j) to (m)**; or”.

(2) In section 80A(1)—

(a) in paragraph (b), “section 33A” is replaced by “**section 33AA**”; 20

(b) in paragraph (c), “section 33A” is replaced by “**section 33AA**”.

**114C** **Notification required that taxpayer not subject to this Part** 25

In section 80B(1), “derived income other than from employment, interest or dividends, or who is a person to whom section 33A(2) applies” is replaced by “does not meet the requirements of **section 33AA(1)**”.

**114D** **Requests for income statements** 30

In section 80C, “to whom section 33A(1) applies” is replaced by “who meets the requirements of **section 33AA(1)**”.

**114E Commissioner must issue income statement**

- (1) In section 80D(1)(c)(ii), “to whom section 33A(1) does apply” is replaced by “who meets the requirements of **section 33AA(1)**”.
- (2) In section 80D(1)(c)(iii), “to whom section 33A(1) does apply” is replaced by “who meets the requirements of **section 33AA(1)**”.

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**114F Taxpayer obligations and assessment on receipt of income statement**

- (1) Section 80F(6A)(b) is replaced by the following:
- “(b) the taxpayer meets the requirements of **section 33AA(1)**; and”.
- (3) **Subsection (1)** applies for the 2016–17 tax year, or earlier tax year set by Order in Council, and later tax years.

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**115 Summary of instalments paid**

Section 80KM(3)(b) is repealed.

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**116 Notices of proposed adjustment required to be issued by Commissioner**

Section 89C(1) is repealed.

**117 Taxpayers and others with standing may issue notices of proposed adjustment**

Section 89D(2B) is repealed.

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**118 Commissioner to make private rulings on request**

After section 91E(3), the following is inserted:

- “(3B) Despite subsection (1), the Commissioner may decide to not make a private ruling, to the extent to which it would be a ruling on how section GA 1 of the Income Tax Act 2007 applies or would apply.”

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**119 Disclosure requirements**

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

- “(1B) In the case of an application for a private ruling that relates to how either sections GC 6 to GC 14 or YD 5 of the Income

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Tax Act 2007 applies, or would apply, the applicant must state in a notice, signed by them and sent to the Commissioner at the same time as the application described in subsection (1), that—

- “(a) they have examined the application; and 5
- “(b) to the best of their knowledge and belief, the information disclosed for the application is comprehensive.”

**119B Taxpayer assessment of income tax**

- (1) Section 92(5) is repealed.
- (2) Subsection (1) applies for the 2016–17 tax year, or earlier tax year given by Order in Council, and later tax years. 10

**120 Section 92AA repealed**

- (1) Section 92AA is repealed.
- (2) Subsection (1) applies for the 2016–17 tax year, or earlier tax year given by Order in Council, and later tax years. 15

**121 New section 92AC**

After section 92AB, the following is inserted:

**“92AC Assessment of income tax**

If a person is assessable with income tax for a tax year,—

- “(a) the Commissioner may make an assessment for the tax year of— 20
  - “(i) the amount on which, in the Commissioner’s judgement, income tax ought to be imposed; and
  - “(ii) the amount of that income tax; and
- “(b) the person is liable to pay the income tax assessed by the Commissioner except to the extent that the person establishes, in proceedings challenging the assessment, that— 25
  - “(i) the assessment is excessive;
  - “(ii) the person is not chargeable with income tax.” 30

**122 Assessment of ESCT**

In section 98(1),—

- (a) “employer” is replaced in each place where it appears by “employer or person”:

(b) “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.

**123 Assessment where default made in furnishing returns**

Section 106(1A) to (1C) are repealed.

**124 Time bar for amendment of income tax assessment**

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Section 108(1A) is repealed.

**125 Evidence of returns and assessments**

In section 110(1), “return, income statement, or assessment”<sup>22</sup> is replaced by “return or assessment”.

**126 Commissioner to give notice of assessment to taxpayer**

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(1) Section 111(1)(ba) and (bb) are repealed.

(2) Section 111(7) is repealed.

**126B Persons excluded**

Before section 120B(a), the following is inserted:

“(aa) a person making a return of tax under **section 33AA(4)**, to the extent that the person is excused from liability under **section 33AA(6)**.”

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**127 Definitions**

In section 120C(1), in the definition of **date interest starts**, paragraph (b)(iii) is repealed.

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**127B Late payment penalty**

In section 139B(1), in the words before the paragraphs, after “assessed,” “and the taxpayer is not excused from liability for a late payment penalty under **section 33AA(6)**,” is inserted.

**128 Section 141JA repealed**

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Section 141JA is repealed.

**129 Absolute liability offences**

Section 143(4) is repealed.

- 130 Knowledge offences**  
 In section 143A(5)(c)(iii), “employer’s superannuation contribution” is replaced by “employer’s superannuation cash contribution”.
- 131 Taxpayer may apply for financial relief** 5  
 After section 177(1), the following is inserted:  
 “(1B) For the purposes of subsection (1)(a), when assessing whether recovery would place the taxpayer in serious hardship, the Commissioner must consider the taxpayer’s financial position at the date on which the application for financial relief is made.” 10
- 132 Write-off of tax by Commissioner**  
 Section 177C(5) is replaced by the following:  
 “(5) If the Commissioner writes off outstanding tax for a taxpayer who has a tax loss, the Commissioner must extinguish all or part of the taxpayer’s tax loss, by— 15  
     “(a) dividing the amount written off by 0.33 and reducing the tax loss by that amount, if the taxpayer is not a company; or  
     “(b) dividing the amount written off by 0.28 and reducing the tax loss by that amount, if the taxpayer is a company.” 20
- 133 Secure credit or debit card payment and fees**  
 In section 226C(3), “amount.” is replaced by “amount, plus any GST.”

**Part 4** 25

**Amendments to Goods and Services Tax Act 1985**

- 134 Goods and Services Tax Act 1985**  
 This Part amends the Goods and Services Tax Act 1985.
- 135 Interpretation** 30  
 (1) In section 2(1), in the definition of **land**, paragraph (b)(iii) is replaced by the following:



- they enter the goods for home consumption or later; and
- “(ii) a supply of goods made by a non-resident, whether or not they made the earlier supply referred to in **subparagraph (i)**; and”. 5
- (2) In section 3A(3C), “to which section 21B applies” is replaced by “meeting the requirements of section **21B(1)(a)(i)** and (b)”.
- (3) Section 3A(4) is repealed.
- 137 Meaning of term supply**
- (1) After section 5(24), the following is added: 10
- ~~“(25) For the purposes of this Act, a fee charged for the late payment of an account is treated as being consideration for a supply of services in the course or furtherance of a taxable activity.~~
- “(25) For the purposes of this Act, an amount charged for the late payment of an account is treated as being consideration for a supply of services in the course or furtherance of a taxable activity, whether the amount is described as a fee, penalty, or other charge. But this subsection does not apply to the extent to which the amount is penalty or default interest, or a charge in the nature of a penalty or default interest, that is imposed under— 15
- “(a) a contract for the supply of services:
- “(b) an enactment.
- “(26) A supply under **subsection (25)** is treated for tax purposes in the same way as the supply to which the amount charged for the late payment relates.” 25
- (2) **Subsection (1)** applies for taxable periods ending on or after 1 April 2003. However, **subsection (1)** does not apply for a person and a fee charged by them for a taxable period ending on or before 1 April 2012 an amount charged by them on or before 31 December 2012 if the person has, before the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill, adopted a regular practice of not charging GST on a late payment fee GST for the late payment of an account, relying on the provisions of the Goods and Services Tax Act 1985 as they were before the amendment made by **subsection (1)**. 30 35

**138 Imposition of goods and services tax on supply**

In section 8(4B)(b)(ii), “90%” is replaced by “95%”.

**139 Time of supply**

In section 9(2)(h),—

- (a) “first day” is replaced by “last day”: 5
- (b) “90%” is replaced by “95%”.

**139B Zero-rating of goods**

After section 11(8C), the following is inserted:

“(8D) For the purposes of the zero-rating of land rules,—

“(a) a supply that is an assignment or surrender of an interest in land, is a supply chargeable with tax at 0%: 10

“(b) the supply of an interest in land is not a supply chargeable with tax at 0% if—

“(i) the supply is made periodically; and

“(ii) an amount is paid or payable under the agreement for the supply in advance of, or contemporaneously with, the supply being made, that— 15

“(A) totals 25% or less of the consideration specified in the agreement; and

“(B) relates to the longer of 1 year and the shortest possible fixed term of the agreement; and 20

“(C) is not itself a regular payment under the agreement.”

**140 Accounting basis** 25

(1) After section 19(3), the following is inserted:

“(3B) Despite subsection (3), a liquidator, receiver, or administrator (as defined in section 239B of the Companies Act 1993) of a registered person who accounts for tax payable on a payments basis may not apply to change the registered person’s accounting basis to an invoice basis.” 30

(2) **Subsection (1)** applies in relation to an application for a change to a registered person’s accounting basis received on or after the date of Royal assent of this Act.

**141 Calculation of tax payable**

(1) Section 20(3C) is replaced by the following:

“(3C) For the purposes of subsection (3), and if subsection (3D) does not apply,—

“(a) ~~input tax under section 3A(1)(a) or (c) on a supply of goods or services may be deducted only to the extent to which the goods or services are used for, or are available for use in, making taxable supplies:~~ 5

“(b) ~~input tax under section 3A(1)(b) on a supply of goods may be deducted only to the extent to which the goods are used for, or are available for use in, making taxable supplies other than—~~ 10

“(i) ~~the delivery of the goods to a person in New Zealand:~~

“(ii) ~~arranging or making easier the delivery of the goods to a person in New Zealand.~~ 15

“(a) input tax as defined in section 3A(1)(a) or (c) may be deducted to the extent to which the goods or services are used for, or are available for use in, making taxable supplies: 20

“(b) input tax as defined in section 3A(1)(b) may be deducted to the extent to which the goods are used for, or are available for use in, making taxable supplies other than—

“(i) the delivery of the goods to a person in New Zealand: 25

“(ii) arranging or making easier the delivery of the goods to a person in New Zealand.”

(2) In section 20(3J)(a)(iii), “goods” is replaced by “goods or services”. 30

**142 Goods and services tax incurred relating to determination of liability to tax**

In section 20A(2), in the words after paragraph (d)(ii), “for the principal purpose of making taxable supplies” is replaced by “for making taxable supplies”. 35

**143 Adjustments for apportioned supplies**

After section 21(4), the following is added:

“(5) In determining the extent of percentage actual use and percentage intended use of a motor vehicle, a registered person may refer to a logbook as provided for in sections DE 6 to DE 11 of the Income Tax Act 2007.”

**144 When adjustments required** 5  
In section 21A(c), “section 21(2)(c)” is replaced by “section 21(2)(c) or (d)”.

**145 Adjustments when person becomes registered after acquiring goods and services**

(1) Section 21B(1)(a) is replaced by the following: 10

“(a) before becoming a registered person, a person acquires—

“(i) goods or services on which tax has been charged under section 8(1):

“(ii) goods entered by them for home consumption under the Customs and Excise Act 1996 on which tax has been levied under section 12(1): 15

“(iii) secondhand goods—

“(A) that are supplied to the person by way of sale; and 20

“(B) that have always been situated in New Zealand or have had tax levied on them as described in **subparagraph (ii)**; and

“(C) the supply of which is not a taxable supply; and” 25

(1B) In section 21B(3)(a)(ii), “section 24(3)” is replaced by “section 24(3) or (7), as applicable”.

(2) Section 21B(4) is repealed.

(3) After section 21B(3), the following is inserted:

“(5) In relation to a supply of secondhand goods, the tax fraction applying to the supply is the tax fraction that applied at the time the goods were purchased by the person.” 30

**146 Concurrent uses of land**

In section 21E(1), “when a registered person uses all or part of an area of land during an adjustment period for making concur- 35

rent taxable and non-taxable supplies” is replaced by “~~when a registered person simultaneously uses the same area of land during an adjustment period for making concurrent taxable and non-taxable supplies~~when a registered person makes use of an area of land during an adjustment period and the same area is, at the same time, both a supply of accommodation in a dwelling as described in section 14(1)(c) and actively marketed for sale as part of a taxable activity”.

**147 Definitions and requirements for apportioned supplies and adjustment periods**

After section 21G(7), the following is inserted:

“(7B) If a person disposes, or is treated as disposing, of an asset before the last required adjustment period under subsection (4), then for the purposes of subsection (2)(a)(ii) and (b)(ii), the current adjustment period is treated as—

- “(a) ending immediately before the date of the disposal; and
- “(b) the final adjustment period.”

**148 Transitional accounting rules**

(†) ~~In section 21H(1), “sections 21A to 21H” are replaced by “sections 21 to 21H”.~~

(1) Section 21H(1) is replaced by the following:

“(1) This section applies in relation to goods or services acquired before 1 April 2011 when—

“(a) a registered person determines the extent to which goods or services are applied for the purposes of making supplies other than taxable supplies under sections 21 to 21H (the **old apportionment rules**) as they were before the enactment of the Taxation (GST and Remedial Matters) Act 2010:

“(b) no adjustment was made or was required to be made under the old apportionment rules before 1 April 2011 for goods or services other than those referred to in section 21HB.”

(2) After section 21H(2), the following is inserted:

“(2B) For goods or services that were acquired before 1 April 2011, for which no adjustment was made or required under the old

apportionment rules before 1 April 2011, and that are not referred to in section 21HB(1), this section applies modified as follows:

- “(a) if input tax was deducted under section 20(3) in relation to the goods or services, or if the goods or services were zero-rated at the time of purchase, the person must apply the old apportionment rules in relation to the supply: 5
- “(b) if no input tax was deducted under section 20(3) in relation to the goods or services, the person must apply the new apportionment rules set out in sections 21 to 21G and **subsection (2C)**. 10
- “(2C) For the purpose of **subsection (2B)(b)**, the first adjustment period is treated as beginning on the date of acquisition of the goods or services and ending on the date that is the first balance date falling after the later of— 15
  - “(a) the date on which the goods or services were first used for making taxable supplies:
  - “(b) the date on which the person becomes a registered person.”
- (3) **Subsection (2)** applies for supplies made on or after 1 April 2011. However, **subsection (2)** does not apply for a person in relation to a tax position taken by them— 20
  - (a) in the period between 1 April 2011 and the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill; and 25
  - (b) relating to an adjustment made under either the old apportionment rules or the new apportionment rules; and
  - (c) relying on the provisions of the Goods and Services Tax Act 1985 as they were before the amendment made by **subsection (2)**. 30

#### 149 Tax invoices

In section 24(7B), “section 60B(3) to (5)” is replaced by “section 60B(3), (4), and (6)”.

#### 150 Group of companies

- (1) In section 55(1)(a)(iii), “multi-rate PIE” is replaced by “multi-rate PIE or a look-through company”. 35
- (2) After section 55(7)(dc), the following are inserted:

“(dd) any statement or other information provided to a member of the group under section 78F shall be deemed to be provided to the representative member; and

“(de) any statement or other information provided by a member of the group under section 78F shall be deemed to be provided by the representative member; and”. 5

**151 Nominated recipients of supplies**

(1) Section 60B(5) is repealed.

(2) In section 60B(6), “subsections (2) to (5)” is replaced by “subsections (2) to (4)”. 10

(3) **Subsections (1) and (2)** apply for supplies made on or after 1 April 2011. However, **subsections (1) and (2)** do not apply for a person in relation to a tax position taken by them—

(a) in the period between 1 April 2011 and the date of introduction of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill; and 15

(b) relating to an input tax deduction claimed by the person; and

(c) relying on the provisions of the Goods and Services Tax Act 1985 as they were before the amendments made by **subsections (1) and (2)**. 20

**151B Keeping of records**

(1) In section 75(3D), “name, address, and registration number” is replaced by “name, and address, and registration number or tax file number, as applicable”. 25

(2) In section 75(3E), “name, address, and registration number” is replaced by “name, address, and, if the principal is a registered person or expects to be a registered person, the registration number”.

**152 Liability in relation to supplies of land** 30

(1) In section 78F(3), “provided by the recipient” is replaced by “provided under subsection (2)provided as required by subsection (2)”.

(2) Section 78F(5) is replaced by the following:

- “(5) For the purposes of section 60B and a contract for a supply that wholly or partly consists of land, when the person who ~~is to receive the supply under~~enters the contract (**person B**) nominates another person (**person C**) ~~as the recipient of~~to receive the supply, the requirements of subsection (2) are met if— 5
- “(a) person B provides the required information as it relates to their expectation of the circumstances of person C:
- “(b) person C provides the required information.”
- (3) In section 78F(7), “the date of settlement.” is replaced by “the date of settlement. If the agent does not have a registration number, their tax file number may be provided in its place. On meeting the requirements of this subsection, the person is treated as having met the requirements of subsection (2B).” 10

**Part 5** 15  
**Amendments to other Acts and regulations**

*Amendments to KiwiSaver Act 2006*

- 153 KiwiSaver Act 2006**  
**Sections ~~154 to 159~~153B to 159B** amend the KiwiSaver Act 2006. 20

- 153B Interpretation**  
In section 4, in the appropriate alphabetical order, the following is inserted:  
“**non-deduction notice** means a notice described in **section 112B**.” 25

- 153BB Employees giving information to employers**  
In section 22(1)(c)(ii), “ended.” is replaced by “ended; or”, and the following is added:  
“(iii) give his or her employer a non-deduction notice.”

- 153BC When subpart does not apply** 30  
After section 62(b), the following is inserted:

“(bb) for the period that the employee has a valid non-deduction notice that they have given to their employer under section 112B; or”.

**154 Contribution rate**

- (1) In section 64(1)(a), in the words before the subparagraphs, “2%” is replaced by “3%”. 5
- (2) After section 64(1)(a)(ii), the following is inserted:
- “(iii) the employee is on a 2% contribution rate immediately before the first pay period that starts on or after 1 April 2013 because they chose 2% under subsection (2); or” 10
- (3) In section 64(2), “2%” is replaced by “3%”.
- (4) **Subsections (1) to (3)** apply for payments of salary or wages for pay periods that start on or after 1 April 2013.

**155 Treatment of unremitted deductions in holding account** 15

In section 78, “section 73(1)” is replaced by “section 73(1)(a)”.

**156 How and when interest is paid on on-payments**

In section 88, “at the same time that the amount of contribution is on-paid to the provider” is replaced by “within 3 months of when the amount of contribution is on-paid to the provider”. 20

**157 Compulsory employer contribution amount: general rule**

- (1) Section 101D(4)(b) is replaced by the following:
- “(b) 2%, if the payment of gross salary or wages is made for a pay period that starts on or before 31 March 2013, excluding a pay period to the extent to which paragraph (a) applies to it: 25
- “(c) 3%, if the payment of gross salary or wages is made for a pay period that is in a year starting on or after 1 April 2013, excluding a pay period that **paragraph (b)** applies to.” 30
- (2) **Subsection (1)** applies for payments of salary or wages for pay periods that start on or after 1 April 2013.

**157B New section 112B inserted**

After section 112, the following is inserted:

**“112B Non-deduction notices**

**“(1)** A person who has passed the KiwiSaver end payment date described in Schedule 1, clause 4(2) may give to their employer a notice (a **non-deduction notice**) stating that the employer must stop making deductions of contributions from the person’s salary or wages under subpart 1. 5

**“(2)** The non-deduction notice is valid, for the purposes of **section 62(bb)**, for the first payment of salary or wages after the non-deduction notice is given to the person’s employer. It is valid for subsequent payments of salary or wages, until the person revokes that non-deduction notice by giving to the employer another notice (a **revocation notice**), in accordance with **subsection (3)**, stating that the employer must start making deductions of contributions from the person’s salary or wages under subpart 1. 10 15

**“(3)** A person must not give a revocation notice to the employer within 3 months of giving a non-deduction notice to them, unless the employer agrees to receive the revocation notice within those 3 months.” 20

**158 Crown contribution**

In the heading to section 226, “**contribution**” is replaced by “**contribution: kick-start contributions**”.

**159 New section 238** 25

After section 237, the following is added:

**“238 Protection from non-compliance: Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2011**

If an effect of the enactment of **sections 96, 154, and 157** of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act **2011** (the **Act**) for an issuer of a security is their non-compliance with an enactment related to securities, that non-compliance is ignored, if it starts before the date (the **end date**) that is 2 months after the day (the **assent day**) on which the Act receives the Royal assent and does not continue on or after the end date, or if it relates to— 30 35

- “(a) a prospectus that is registered under the Securities Act 1978 on or before assent day:
- “(b) an investment statement under the Securities Act 1978 that is dated on or before assent day.”

**159B Schedule 1—KiwiSaver scheme rules** 5

(1) In schedule 1, clause 3(2), “contributions holiday” is replaced by “contributions holiday or for the period that the employee has a valid non-deduction notice under **section 112B** that they have given to their employer”.

(2) Schedule 1, clause 4(2)(b) is replaced by the following: 10  
 “(b) the 5 year qualification date; or”.

(3) After schedule 1, clause 4(5), the following is added:

“(6) For the purposes of these rules, **5 year qualification date** means the earlier of—

“(a) the date that is 5 years after the day on which the member first became a member of a KiwiSaver scheme; or 15

“(b) the date that is 5 years after the day, under section 85, on which the Commissioner first received a contribution for a KiwiSaver scheme in relation to the member.”

*Amendment to Child Support Act 1991* 20

**159C Notification requirements of liable parent**

In section 81(1)(b) of the Child Support Act 1991, “to whom section 33A of the Tax Administration Act 1994 applies” is replaced by “who meets the requirements of section 33AA(1) of the Tax Administration Act 1994”. 25

*Amendments to Income Tax Act 2004*

**160 Income Tax Act 2004**

**Sections 161 to 168** amend the Income Tax Act 2004.

**161 Meaning of expenditure on account of an employee**

(1) Section CE 5(1), other than the heading, is replaced by the following: 30

“(1) **Expenditure on account of an employee** means a payment made by an employer relating to expenditure incurred by an employee or to be incurred by an employee.”

(2) **Subsection (1)** applies for the 2005–06 and later income years. 5

**162 Expenditure on account, and reimbursement, of employees**

(1) In section CW 13(1), “**Expenditure on account of an employee**” is replaced by “**Expenditure on account of an employee**, being a payment to which section CE 5 (Meaning of expenditure on account of an employee) applies, that is”. 10

(2) **Subsection (1)** applies for the 2005–06 and later income years.

**163 New heading and section DB 31B inserted**

(1) After section DB 31 of the Income Tax Act 2004, the following 15 is inserted:

*“Unsuccessful software development*

**“DB 31B Expenditure in unsuccessful development of software**

*“When this section applies*

“(1) This section applies when a person incurs expenditure in the 20 development of software for use in the person’s business if—

“(a) ~~the person incurs the expenditure with the main intention that the software be used in the person’s business;~~  
and

“(b) the development of the software is abandoned before 25 the software is fit to be used in the person’s business; and

“(c) the person would have been entitled to a deduction for an amount of depreciation loss for the software if the software had been made fit ~~for use~~ to be used in the per- 30 son’s business.

*“Deduction*

“(2) The person is allowed a deduction for the expenditure incurred in the development of the software to the extent to which no

deduction has been allowed for the expenditure under another provision of this Act or under another Act.

*“Timing of deduction*

- “(3) The deduction is allocated to the income year in which the development of the software is abandoned. 5

*“Link with subpart DA*

- “(4) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.

“Defined in this Act: capital limitation, deduction, general limitation, general permission, income year” . 10

- (2) **Subsection (1)** applies for the ~~2007–08~~2006–07 and later income years.

#### 164 Some definitions

- (1) In section DC 14(1), in the definition of **employee**, paragraph (a) is replaced by the following: 15

“(a) means a person that—

“(i) is employed by a company:

“(ii) is not a corporation sole, a body corporate, or an unincorporated body:” . 20

- (2) In section DC 14(1), in the definition of **employee**,—

(a) in paragraph (b)(ii), “the company; or” is replaced by “the company”:

(b) paragraph (b)(iii) is repealed.

- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years. 25

#### 165 Application of this subpart

- (1) Section EC 1(1) is replaced by the following:

*“When this subpart applies*

- “(1) This subpart applies to the valuation of property when a person who owns or carries on a business holds livestock for the purposes of sale or exchange in the ordinary course of carrying on the business.” 30

- (2) **Subsection (1)** applies for the 2005–06 and later income years. However, **subsection (1)** does not apply to a person in relation to a tax position taken by the person—
- (a) in the period from 1 April 2005 to 31 May 2011; and
  - (b) relating to the valuation of livestock; and 5
  - (c) relying on the provisions of subpart EC as they were before the amendment made by **subsection (1)**.

**165B Use of money interest payable by person**

In section EF 5(2), “income tax liability” is replaced by “assessed liability”. 10

**166 Spreading forward of deductions for repairs to fishing boats**

- (1) In section EJ 2(1), “Part 10 of the Maritime Transport Act 1994” is replaced by “Part 21 of the Maritime Rules made under the Maritime Transport Act 1994”. 15
- (2) In section EJ 2(6), in the definition of **fishing boat**, “a fishing boat under Part 4 of the Fisheries Act 1983” is replaced by “a fishing vessel under section 103 of the Fisheries Act 1996”.
- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years. 20

**167 Portfolio entity tax liability and rebates of portfolio tax rate entity for period**

- (1) After section HL 20(9), the following is inserted:
  - “(9B) For the purposes of subsection (9) and the determination of a person’s prescribed investor rate, the person’s taxable income does not include an amount that— 25
    - “(a) arises because their portfolio investor rate is lower than their prescribed investor rate; and
    - “(b) is treated as taxable income because section CX 44D does not apply.” 30
- (2) Section HL 20(13) is repealed.

**168 Definitions**

- (1) This section amends section OB 1.

- (2) In the definition of **hire purchase agreement**, paragraph (a) is replaced by the following:
- “(a) means an agreement under which goods are let or hired with an option to purchase; and”.
- (3) **Subsection (2)** does not apply for a tax position that is inconsistent with **subsection (2)** and that is taken in a tax return filed before the date on which the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill was introduced. 5
- (2) In the definition of **employee**, after paragraph (a), the following is inserted: 10
- “(ab) for the purposes of the FBT rules, includes a shareholder-employee:”.

*Amendments to Income Tax Act 1994*

- 169 Income Tax Act 1994**
- Section 170** amends the Income Tax Act 1994. 15
- 170 Certain repairs to fishing boats**
- (1) In section DO 2(1), “Part 4 of the Shipping and Seamen Act 1952” is replaced by “Part 10 of the Maritime Transport Act 1994”.
- (2) In section DO 2(1), “Part 10 of the Maritime Transport Act 1994” is replaced by “Part 21 of the Maritime Rules made under the Maritime Transport Act 1994”. 20
- (3) In section DO 2(2), in the definition of **fishing boat**, “the Fisheries Act 1983;” is replaced by “the Fisheries Act 1983 or section 103 of the Fisheries Act 1996;”. 25
- (4) **Subsection (1)** applies for the 1995–96 to 1997–98 income years.
- (5) **Subsection (2)** applies for the 1998–99 and later income years.
- (6) **Subsection (3)** applies for the 2001–02 and later income 30 years.

*Amendments to Income Tax (Depreciation  
Determinations) Regulations 1993*

**171 Income Tax (Depreciation Determinations) Regulations 1993**

**Sections 172 to 175** amend the Income Tax (Depreciation Determinations) Regulations 1993. 5

**172 Fees**

(1) In regulation 9(1)(a), “\$50” is replaced by “\$150 plus any GST”.

~~(2) In regulation 9(1)(b),—~~ 10

~~(a) “\$30” is replaced by “\$75 plus any GST”.~~

(2) In regulation 9(1)(b), “\$30” is replaced by “\$75 plus any GST”.

(3) Regulation 9(1)(c) and (d) are replaced by the following:

“(c) a departmental consultation reimbursement fee equal to 15  
the amount of fees, less GST, paid by the Commissioner  
to consultants such as valuers, engineers, and architects  
in obtaining advice as to the estimated useful life or  
estimated residual value of the property to which the  
application relates (not being fees to which **paragraph** 20  
**(d)** applies), plus any GST:

“(d) an additional consultation reimbursement fee, equal to  
the amount of fees, less GST, paid by the Commissioner  
to the relevant consultant, plus any GST, where the ap- 25  
plicant—

“(i) requests, in writing to the Commissioner, that a  
consultant carry out further work on the applica-  
tion:

“(ii) requests a conference on the application and a  
consultant paid by the Commissioner attends the 30  
conference on the nomination of either the appli-  
cant or the Commissioner.”

(4) After regulation 9(1), the following is inserted:

“(1B) An applicant for a determination of a provisional rate under  
section 91AAG of the Act is liable to pay for the application an 35  
additional consultation reimbursement fee equal to the amount

of fees, less GST, paid by the Commissioner to the relevant consultant, plus any GST, if—

“(a) the Commissioner declines to issue a determination, or issues a determination that is unfavourable to the applicant; and 5

“(b) the applicant, after the Commissioner’s decision,—

“(i) requests, in writing to the Commissioner, that a consultant carry out further work on the application but the further work does not cause the Commissioner to issue a determination favourable to the applicant: 10

“(ii) requests a conference on the application and a consultant paid by the Commissioner attends the conference on the nomination of either the applicant or the Commissioner but the conference 15 does not cause the Commissioner to issue a determination favourable to the applicant.”

(5) In regulation 9(2), “subclause (1)(d)” is replaced by “subclause (1)(d) or **(1B)**”.

**173 Payment of fees** 20

(1) In regulation 10(1), “paragraphs (b) to (d) of regulation 9(1)” is replaced by “regulation 9(1)(b) to (d) or **(1B)**”.

(2) In regulation 10(2), “paragraphs (b) to (d) of regulation 9(1)” is replaced by “regulation 9(1)(b) to (d) or **(1B)**”.

**174 Regulation 11 replaced** 25

Regulation 11 is replaced by the following:

**“11 Waiver of fees**

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 30 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, the fees paid by the Commissioner to consultants in the application, and any other relevant factors.”

<b>175</b>	<b>Regulation 12 revoked</b> Regulation 12 is revoked.	
	<i>Amendments to Income Tax (Determinations) Regulations 1987</i>	
<b>176</b>	<b>Income Tax (Determinations) Regulations 1987</b> <b>Sections 177 and 178</b> amend the Income Tax (Determinations) Regulations 1987.	5
<b>177</b>	<b>Publication of determinations</b> In regulation 10, “in the <i>Gazette</i> ” is replaced by “, in a publication chosen by the Commissioner.”	10
<b>178</b>	<b>Regulation 13 replaced</b> Regulation 13 is replaced by the following: “ <b>13 Waiver of fees</b> 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.”	15
	<i>Amendments to Tax Administration (Binding Rulings) Regulations 1999</i>	
<b>179</b>	<b>Tax Administration (Binding Rulings) Regulations 1999</b> <b>Sections 180 and 181</b> amend the Tax Administration (Binding Rulings) Regulations 1999.	20
<b>180</b>	<b>Fees</b> In regulation 3(1),— (a) in paragraph (a), “\$310” is replaced by “\$280 plus any GST”; and (b) in paragraph (b)(i), “\$155” is replaced by “\$140 plus any GST”; and (c) paragraph (b)(ii) is revoked.	25     30

**Taxation (Annual Rates, Returns Filing,  
and Remedial Matters) Bill**

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**181 Regulation 7 revoked**  
Regulation 7 is revoked.

*Amendments to Tax Administration (Form of  
Warrant) Regulations 2003*

**182 Tax Administration (Form of Warrant) Regulations 2003** 5  
**Section 183** amends the Tax Administration (Form of Warrant) Regulations 2003.

**183 Schedule 2—Form of warrant**

- (1) In schedule 2, clause 2, “books or documents” is replaced by “documents”. 10
- (2) In schedule 2, clause 3, “documents and books” is replaced by “documents”.

*Income Tax (Refund of Excess Tax) Order 2003*

**184 Income Tax (Refund of Excess Tax) Order 2003 revoked** 15  
The Income Tax (Refund of Excess Tax) Order 2003 is revoked.

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**Legislative history**

14 September 2011  
27 September 2011

Introduction (Bill 325–1)  
First reading and referral to Finance and  
Expenditure Committee

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