

Taxation (Livestock Valuation, Assets Expenditure, 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 (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill and recommends that it be passed with the amendments shown.

Introduction

The bill seeks to make amendments to several Acts, including the Income Tax Act 2007, the Tax Administration Act 1994, the Goods and Services Tax Act 1985, and the Income Tax Act 2004, in order to improve the fairness of existing tax law and regulations, protect the tax base, and minimise the burden on businesses. The following are the main changes the bill proposes:

- Expanding on the rules for livestock valuation introduced in Budget 2012.

- Tightening the rules for deducting expenditure on assets such as holiday homes, boats, and aircraft that the owner uses both privately and to earn income.
- Changing the time periods for claiming refunds.
- Changing the GST rules for business-to-business cross-border transactions, and several other GST-related amendments.
- Conferring donee status on three charities whose purposes are largely outside New Zealand.

The bill also proposes various remedial amendments, including the following:

- Aligning amortisation rules for the primary sector with general depreciation rules.
- Removing mismatches in the tax treatment of certain foreign currency hedges.
- Correcting an unintended minor change to the tax treatment of allowances for members of Parliament.

This commentary discusses the more significant amendments we recommend to the bill. It does not discuss minor or technical amendments. Some of the amendments we recommend would make provisions apply retrospectively. We consider that taxpayers would not be adversely affected by these amendments.

Supplementary Order Paper 167

The Minister of Revenue released Supplementary Order Paper 167 on 11 December 2012, and wrote to the committee inviting us to consider the proposed amendments set out in the SOP during our consideration of the bill. The SOP proposed four principal amendments, and some minor remedial amendments.

Car park tax proposal

One of the key proposals in the SOP was to broaden the fringe benefit tax coverage of car parks provided by employers to employees. The new rules would apply mainly to parking spaces in the central business districts of Auckland and Wellington, where the benefits to employees are greatest.

We considered the proposal at some length, noting that there was widespread concern about the associated compliance costs. The

proposal also generated some considerable comment in the media. We question whether the additional revenue to be gained from such a measure would outweigh the increased compliance costs that it would impose on employers and businesses; we also consider the proposed measure would raise safety issues for some CBD employees. We understand that the proposed amendment is no longer supported by the Minister of Revenue, and we are recommending that it not be included in the bill.

Other proposals

We support the other proposals in the SOP, and recommend them as amendments to the bill, with some minor adjustments. The proposals relate to the following matters:

- Changing the tax treatment of lease inducement and lease surrender payments.
- Including certain salary trade-offs and non-cash benefits, such as vouchers, as income in social assistance calculations.
- Preventing taxpayers from electing to treat short-term agreements, or agreements for the sale and purchase of property or services, as financial arrangements.

The SOP also proposes several technical amendments to support the restructuring of KiwiRail's balance sheet to reflect a standard commercial valuation approach, with effect from 31 December 2012, and a number of minor remedial amendments, mostly to improve the drafting and remove redundant references.

We are satisfied that the amendments proposed in the SOP are consistent with the bill's original policy intent.

Rules for mixed-use assets

Clause 19 of the bill would insert new subpart DG in the Income Tax Act 2007, changing the tax rules for assets, such as holiday homes, aircraft, and boats, that are used by the owner both privately and to earn income. We share the policy concern about risks to the tax base from the over-claiming of deductions. The changes would limit the amount of income tax deduction allowed, by applying the principle of apportionment to the use of such assets. General expenditure relating to the asset would be deductible according to the ratio of its income-earning use as a proportion of its total use. (For example, a boat that

was hired out for a one-day fishing trip, used by its owner for 50 days, and left idle for the rest of the year could have one-51st of the year's expenses on it deducted against the hire charge.) At present, expenditure is deductible as long as the asset is available for hire or rental, whether or not it is used.

Where a close company owns a mixed-use asset, the deductibility of interest would be limited by applying the same apportionment ratio. Interest deductions of group companies and shareholders would also be limited in some circumstances. At present, interest incurred by companies is deductible regardless of the use of the borrowed funds. The bill would also ring-fence, or quarantine, certain losses. If the permissible deductions exceeded the income earned from an asset, the loss would be quarantined and carried forward to offset against future income generated by that asset. The quarantining would apply only where the income generated from the asset was less than 2 per cent of the asset's market value.

We strongly support the intent of measures to restrict the over-claiming of deductions for mixed-use assets. However, we consider a number of amendments desirable to address concern about the complexity of the proposed rules, and to improve their workability. In particular, the majority of us recommend refining its coverage to focus on the main assets that offer private benefit: holiday homes, boats, and aircraft. This would achieve the policy intent of preventing the taxpayer-funded subsidies which the owners of such assets have enjoyed under the current rules, without imposing unnecessary compliance costs on owners of other assets. We understand that little revenue would be foregone by excluding other assets, as short-term holiday accommodation represents the bulk of deductions at present. We expect the Inland Revenue Department to be vigilant in monitoring how well the legislation meets the policy intention.

We are also recommending an amendment to avoid the double taxation that would result if the mixed-use asset rules were applied in addition to fringe benefit tax rules.

As the changes we propose would entail comprehensive redrafting of the bill as introduced, we recommend replacing clause 19 in its entirety; amendments are also proposed to clauses 10, 35, and 57 (subclauses 1, 2, 10, 18, 20, 20B, and 24). The following are the principal changes we recommend.

Commencement date

We recommend deferring the implementation date of the apportionment rules until the beginning of the 2014/15 tax year for assets other than land and buildings. Assets such as boats and aircraft are more likely to be held in companies or complex corporate structures than by individuals, and a one-year deferral would reduce compliance difficulties by allowing time for the assets to be transferred out of these structures. We consider such a transition period reasonable, and note that boats and aircraft make up only a small proportion of mixed-use assets. We understand that the change would not have fiscal implications. The change would be effected by amending clause 19(2), with consequential changes to clauses 10, 35, and 57.

We also recommend allowing assets (including land and buildings) to be transferred out of a company structure during the transition period without incurring a tax liability for depreciation recovery, provided the assets are transferred to shareholders in proportion to their shareholding, and at the company's tax book value. A tax liability for depreciation recovery would arise later if the asset were subsequently sold for more than its book value. This change would be effected by new clause 25B, inserting new section DZ 21.

Range of assets to which the rules apply

We recommend refining the scope of the mixed-use asset provisions by amending clause 19, section DG 3, to expressly cover the three main types of asset that are the policy focus of this provision: land (generally short-term holiday accommodation), boats, and aircraft. This would avoid potential complications from the rules capturing other assets, such as earth-moving equipment, which are unlikely to offer a significant element of private benefit.

The bill would apply the rules to boats and aircraft with a cost of \$50,000 or more. We recommend making it clear that this cost would apply to an asset considered in its entirety. So, for example, a boat and its motor would be viewed as a single unit, and could not be counted separately in order to fall under the threshold.

We propose that the rules should not apply to assets of which private use is minor or incidental and which are not used in a rental or charter business, to assets for which the income-earning use is long-term

residential, or to assets that change between the owner's use and income-earning use during a year.

Relationship with fringe benefit tax and dividend rules

We are recommending that where the mixed-use assets rules apply, fringe benefit tax rules should not apply, in order to avoid double taxation. However, we do not consider that the same situation applies regarding deemed dividend rules. We consider deemed dividends to be comparable to a cash dividend, which is not deductible to the company paying it, but is income to the person receiving it, who may have imputation credits available to meet the tax liability. We therefore consider it appropriate that both the mixed-use asset and deemed dividend rules apply.

The amendments we recommend, inserting clause 13B and amending clause 19, section DG 2(4), would make it clear that no liability to pay fringe benefit tax would arise from the private use of an asset under subpart DG, but that a company might be required to treat such a benefit as a dividend.

Private versus income-earning use

We recommend amending clause 19, section DG 4, to clarify what is, and is not, private use for the purposes of the mixed-use asset rules. In particular, we propose simplifying the provisions in the bill as introduced by using the same concept of private use both to determine whether an asset is subject to the rules, and in the apportionment formula.

Our amendments would make it clear that private use would include use by associates, or use for which less than 80 percent of market value is paid. In the interests of equity, we recommend an amendment to allow any income derived from private use to be treated as non-assessable. The bill as introduced would deny any deduction for expenditure related to private use, yet any income received would be taxed. Our proposed amendment would align the treatment of income and expenditure related to private use.

As for what is not private use, we propose several changes to clarify and extend the rather complex provisions of the bill as introduced. First, we recommend specifying that the use of an asset by a person in the ordinary income-earning process is not private use. Further, we

recommend that the concept of private use exclude any use of an asset necessary to repair damage suffered while the asset was being used to earn income. (Apportionment would, however, apply for normal repairs and maintenance, under section DG 7.) Similarly, where an asset such as an aircraft or boat must be relocated in order to earn income, this would not count as private use provided an amount was included in the normal hire charge toward the cost of the relocation.

Quarantining of losses

We considered carefully the level at which the quarantining rule should apply. In the bill as introduced, losses would be quarantined only when the income earned from an asset was less than 2% of its market value; if earnings exceeded this percentage, losses could still be offset against other income in the year in which they arose. We note that the threshold is low, and question whether it addresses adequately the problem of business assets being used for private benefit on the basis that taxpayers will subsidise any loss. On balance, however, we accept that the bill seeks to achieve a reasonable balance in introducing the principle of ring-fencing of losses. We are therefore not recommending increasing the income level below which quarantining would apply, but we expect the Inland Revenue Department to be vigilant in enforcing the new rules.

We recommend one change to the quarantining provision to allow for a situation in which a mixed-use asset was destroyed or damaged and had to be replaced. Provided the replacement asset was substantially identical, we consider that the losses quarantined and carried forward from the original asset should be able to be offset against earnings from the replacement asset. This change would be made by amending clause 19, section DG 17(6).

Ability to opt out

To reduce compliance costs, the bill as introduced (clause 19, section DG 21) would allow the owner of an asset to opt out of the rules if the asset earned less than \$1,000 in a year, or incurred a loss. Any income would be treated as exempt from tax, and in turn the owner would not be able to claim any deductions for expenditure related to the asset. In a loss situation, deductions would be quarantined for use against future income. We consider that a threshold of \$4,000

in earnings would be more practicable, and recommend amending clause 19, section DG 21 accordingly.

To avoid unintended consequences, we recommend inserting section DG 21(4) so that the opt-out provisions would not apply when the asset was owned by a company.

GST treatment

We recommend amending clause 84 so that the formula for calculating deductions in new section 20G of the Goods and Services Tax Act would include as an income-earning day any day on which consideration is derived whether or not the consideration was at market value. This treatment would improve the bill's consistency with normal GST rules, by recognising a supply at other than market value, but treating it as having been made at market value if the supply is between associated parties.

Livestock valuation rules

The bill proposes elaborating on the rules for the valuation of livestock, introduced in Budget 2012, under which a farmer's choice to use the herd scheme valuation method is generally irrevocable. The bill proposes an exception to the irrevocability rule, and some new rules relating to disposals of livestock. We recommend some amendments to clauses 26 to 30 to fine-tune the proposed provisions.

As introduced, clause 26, inserting new section EC 4B, requires that if livestock held in the herd scheme are sold to an associated person, the purchaser must also adopt the herd scheme valuation method and the seller's base number of livestock under that method. We consider that the policy intent of this provision, ensuring tax neutrality, could be achieved more straightforwardly if the transaction were deemed for tax purposes to take place at herd scheme values, without requiring the purchaser to actually adopt the herd scheme method. Similarly, to achieve symmetry between the two parties in the transaction, we recommend that the sale and purchase be deemed for tax purposes to take place in the same year, even if the seller and purchaser have different balance dates. Accordingly, we recommend amending clause 26 by inserting new section EC 4C, with the consequential insertion of new clause 34E.

Clause 26, new section EC 4B(2), proposes a limited exception to the associated persons rule: if a farmer retired and the children or grandchildren purchased the livestock, they would not be required to adopt the herd scheme approach. We recommend some amendments to improve the workability and fairness of this exception. First, to ensure that the exception is not used for tax minimisation purposes, we propose that it apply only where the inter-generational transfer is at market value and on commercial terms and conditions, other than terms and conditions related to financing. Further, we propose a 4-year timeframe from the date of sale; if the seller were to re-commence farming within this period, the younger generation would be required to adopt the herd scheme with retrospective effect, and Inland Revenue could revisit their tax returns back to the date of sale. We also propose that a retired farmer be allowed a minimal level of activity for lifestyle or hobby reasons without breaching the rules for having ceased farming as a business. These amendments would be made in new section EC 4B(2)(b)(ii).

Finally, we consider that the exception the bill proposes to the associated persons rule is overly restrictive, and should be widened slightly. We recommend inserting new section EC 4B(3) in clause 26 to accommodate a situation where the children or grandchildren of a farmer received an interest in livestock through the farmer's will, when they had not previously held an interest in the stock. We also recommend inserting new clause EC 4B(7) to avoid the exception being restricted inappropriately where a farmer's relatives operated a separate and independent farming operation.

Lease inducement and lease surrender payments

We recommend amending the bill to change the tax treatment of lease inducement and lease surrender payments, largely as proposed in SOP 167. We have incorporated some variation from the proposals in the SOP, mainly for clarification.

These measures, which were the subject of an issues paper and public consultation in the past year, seek to improve fairness and remove distorted business incentives by correcting some imbalances in the current tax system. At present, lease inducement payments, which are generally made by commercial landlords to prospective tenants, are deductible for the landlord but non-taxable for the tenant. This

creates an opportunity for taxpayers to substitute non-taxable inducement payments for tax-deductible rent payments. Lease surrender payments present a different problem: although they are a business expense, they are non-deductible for the commercial tenant. The bill would make both types of payment taxable for the recipient and deductible for the payer over the term of the lease.

We have taken note of concern about inconsistencies between the existing and proposed rules on land-related lease payments. The inconsistencies arise because the existing rules have been established individually, over a long period. We are aware that a wider review is currently seeking to develop a consistent body of rules for the tax treatment of all land-related lease payments. Rather than proposing interim adjustments to the proposed rules now, we consider it preferable to wait until the full review has taken place. Accordingly, we recommend that the proposals from the SOP proceed, with some adjustments to clarify the provisions and improve their workability.

The amendments we recommend to the bill as introduced are in clause 4B, inserting new sections CC1B and CC1C, clause 17B, inserting new sections DB 20B and DB 20C, new clause 25C, amending section EA 3, new clause 32B, inserting new section EI 4B, and clause 57(19B), amending section YA 1.

GST rules for non-residents

Clauses 91 and 92 of the bill would insert new sections 54B and 54C dealing with the registration of non-residents for GST purposes.

As introduced, the bill would not allow a non-resident company to register for GST as part of a group of companies if the group also included a New Zealand resident company. We are recommending that this restriction be removed so that non-resident companies could register (or continue to be registered) within a cross-border group rather than having to meet the more onerous requirements of non-resident registration.

The amendments we propose would mean that the new rules for non-resident registration would apply only when the non-resident (or the GST group in which the non-resident was a member) made no taxable supplies in New Zealand. Otherwise, the existing registration and refund rules would apply.

We consider that making taxable supplies in New Zealand, or being part of a group that does so, implies a presence in New Zealand that makes a non-resident less of a risk to the tax base than a non-resident with no New Zealand connections. In our view, the proposed amendment would strike a reasonable balance, protecting the revenue base while avoiding undue barriers to the formation of cross-border business groups.

Treatment of short-term agreements for sale and purchase

We recommend inserting clauses 31B and 33B to make changes to the treatment of certain excepted financial arrangements, which taxpayers can currently elect to treat as financial arrangements. (There are five types: agreements for the sale and purchase of property or services, short-term agreements for sale and purchase, short-term options, travellers' cheques, and certain variable principal debt instruments.)

The current rule, in section EW 8, was designed to reduce compliance costs for taxpayers in certain situations; for example, if they had short-term agreements for sale and purchase, such as trade receivables or payables, denominated or payable in a foreign currency. The rule has proved to be broader than necessary, however, with unintended consequences. The changes we recommend would conform more closely to the legislation's original policy intent of reducing compliance costs for taxpayers, and would remove the existing rule's potential "overreach". We have incorporated into our recommendations some drafting changes from the original proposal in SOP 167 in order to make the policy intent clearer.

We recommend inserting clause 31B, new section ED 4, to allow taxpayers, for certain excepted financial arrangements, to value amounts receivable or payable denominated in a foreign currency for tax purposes using the same exchange rate used for accounting purposes. Once a taxpayer elected into the rule, they would not be allowed to revoke the election.

We also recommend inserting clause 33B to amend the existing rule in section EW 8 so that, in general, taxpayers would no longer be able to elect to treat the five excepted financial arrangements specified above as financial arrangements. However, notwithstanding this

general rule, an exception would be made for financiers who purchase debt for collection, who would continue to be able to treat the debt under the financial arrangement rules.

Salary trade-offs

We recommend providing for certain salary trade-offs and non-cash benefits, such as petrol and grocery vouchers, to be included as income in social assistance calculations. A motor vehicle provided by an employer would be included if it was part of an explicit salary trade-off; that is, if the employee would be entitled to a higher income if they chose not to receive the non-cash benefit. The amendments we recommend would be made by inserting clauses 39B and 39C, which would insert new section MB 7B in the Income Tax Act 2007.

We considered whether employers should be required to provide their employees with a statement setting out the total value and breakdown of benefits received from vouchers, as proposed in SOP 167. After considering the compliance costs likely to be entailed, however, we are not recommending such a requirement.

Short-term charge facilities

We recommend some amendments to clarify the position of charitable organisations regarding non-salary trade-offs. Although charities are not generally required to pay fringe benefit tax on goods and services they provide to employees, a long-standing exception applies for benefits provided by way of short-term charge facilities above a certain minimum (currently where the benefits exceed 5% of an employee's salary or wages). We consider it appropriate to make it clear that vouchers for goods such as groceries and petrol are a form of short-term charge facility, and so would be subject to fringe benefit tax. We also recommend modifying the existing minimum to the lower of \$1,200 or 5% of an employee's salary or wages.

The changes we recommend would be made by inserting clause 13C, amending section CX 25, and clauses 44B and 44C, amending sections RD39 and RD54.

Fair dividend rate foreign currency hedges

At present, there is a mismatch in the tax treatment of foreign currency hedges and some offshore financial assets, principally those taxed under the fair dividend rate rules. The mismatch makes it more difficult to hedge certain investments effectively. The bill addresses this by proposing a new, optional rule that would allow eligible taxpayers to apply fair dividend rate rules to their foreign currency hedges.

We recommend some amendments which would make technical refinements to ensure that the proposed rule works as intended. They would mainly amend clause 33, new subpart EM, with minor amendments to clauses 9, 24, and 57 of the bill as introduced.

We considered whether it was desirable to widen the eligibility criteria or the types of hedging arrangements to which the new rules would apply. However, as this is a complex area of tax law we believe caution is warranted so the effects of any changes can be evaluated carefully. We suggest that this issue might be included in the Government's tax policy work programme.

Technical and remedial matters

KiwiRail restructuring

We are recommending several amendments, as proposed in SOP 167, to support the restructuring of the KiwiRail group's balance sheet to reflect a standard commercial valuation approach. The restructuring was announced in June 2012, and the amendments would apply from 31 December 2012. They would ensure that the restructuring did not impose additional tax liabilities, and would provide for the tax position of the new State-owned enterprises following the restructuring. The amendments are technical in nature, but we note them here because they affect several clauses of the bill as introduced: clauses 12C, 34D (inserting sections EZ 64 to EZ 68 into the Income Tax Act 2007), 57(1B), 57(19C–D), 57(23B), and 57(25B–E), 57D, 74(2)–(3), and 94B.

Services for members of Parliament

Clauses 12, 13, 102, and 103 of the bill would correct an anomaly arising from changes to fringe benefit tax provisions to ensure that

the tax applied only to the private element of any payment or service provided to members of Parliament under the Civil List Act 1979. This would accord with the original policy intent.

The Minister of Revenue brought to our attention a further anomaly in this aspect of tax legislation, and we recommend inserting new clause 13D to correct it. This would clarify the administrative practice for calculating fringe benefit tax on the private element of services provided to MPs.

Transitional imputation penalty tax

Clause 71 relates to the penalty tax payable if dividends were over-imputed following the recent change in the company tax rate from 30% to 28%. As introduced, the bill would exempt taxpayers from the penalty in some circumstances, to acknowledge that the effect of the tax rate change may not have been fully appreciated initially. We consider that a penalty of 10% is excessively punitive in relation to the scale of the infringement, and should be waived entirely. Accordingly, we recommend amending clause 71 to repeal section 140C containing the penalty tax provision.

GST agents' opt-out provisions

The GST Act currently allows only one tax invoice to be issued when an agent supplies goods or services for and on behalf of a principal. However, some accounting systems automatically issue invoices when goods and services are supplied. To avoid a technical breach of the legislation, the bill (clause 93) would allow principals and their agents to opt out of the agency rules in the GST Act, and permit each to issue a tax invoice in relation to what would be treated as two separate supplies.

We consider that some of the additional requirements introduced under this provision could be impractical for some principals and agents, particularly smaller entities. Accordingly, we recommend an amendment to clause 93 to improve the workability of the provision.

Green Party of Aotearoa/New Zealand minority view

The Green Party has serious concerns about dropping the proposal to move to a fairer tax treatment of employer-provided car parks, and considers that the compliance cost objections raised by stakeholders

were based on a number of erroneous assumptions. We would support the proposal being included in the bill.

Appendix

Committee process

The Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill was referred to the committee on 29 November 2012. The closing date for submissions was 7 February 2013. We received and considered 41 submissions from interested groups and individuals. We heard 18 submissions.

Supplementary Order Paper 167 was released by the Minister of Revenue on 11 December 2012. The Minister wrote to us asking us to consider it, and other proposals, on 11 December 2012, 7 and 22 March 2013, and 26 April 2013.

We received advice from the Inland Revenue Department, the Treasury, and our specialist tax advisor, Therese Turner.

Committee membership

Todd McClay (Chairperson)

Maggie Barry

David Bennett

Hon Clayton Cosgrove

Hon David Cunliffe

Paul Goldsmith

John Hayes

Dr Russel Norman

Hon David Parker

Rt Hon Winston Peters

Hon Kate Wilkinson

Julie Anne Genter replaced Dr Russel Norman for this item of business.

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Peter Dunne

Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill

Government Bill

Contents

	Page
1 Title	11
2 Commencement	11
Part 1	
Amendments to Income Tax Act 2007	
3 Income Tax Act 2007	13
3B Section CB 26 amended (Disposal of certain shares by portfolio investment entities)	13
3C Section CB 36 amended (Disposal of emissions units)	14
4 Section CC 1 amended (Land)	14
4B New sections CC 1B and CC 1C inserted	14
CC 1B Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence	14
CC 1C Consideration for agreement to surrender leasehold estate or terminate licence	15
5 New section CD 29B inserted (Issues to shareholders of rights to subscribe for or sell back shares)	16
CD 29B Issues to shareholders of rights to subscribe for or sell back shares	16
6 Section CD 40 amended (Adjustment if dividend recovered by company)	17
7 Section CD 41 amended (Adjustment if amount repaid later)	17

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

8	Section CR 4 amended (Income for general insurance outstanding claims reserve)	17
9	New section CV 18 inserted (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)	18
	CV 18 Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests	18
10	New section CW 8B inserted (Certain amounts derived from use of assets)	18
	CW 8B Certain amounts derived from use of assets	18
10B	Section CW 16 amended (Allowance of Governor-General and other benefits and privileges)	19
11	Section CW 28 amended (Pensions)	19
12	Section CW 31 replaced (Services for members of Parliament)	19
	CW 31 Services for members of Parliament	19
12B	Section CW 55BB amended (Minors' income, to limited extent)	20
12C	New heading and section CW 65 inserted	20
	<i>Restructuring under New Zealand Railways Corporation Restructuring Act 1990</i>	
	CW 65 New Zealand Railways Corporation restructure: exempt income	20
13	Section CX 12 replaced (Services for members of Parliament)	21
	CX 12 Services for members of Parliament	21
13B	Section CX 17 amended (Benefits provided to employees who are shareholders or investors)	21
13C	Section CX 25 amended (Benefits provided by charitable organisations)	22
13D	Section CX 33B inserted (Benefits for members of Parliament)	22
	CX 33B Benefits for members of Parliament	22
14	New section DA 5 inserted (Treatment of expenditure for commercial fit-out)	23
	DA 5 Treatment of expenditure for commercial fit-out	23
15	Section DB 5 amended (Transaction costs: borrowing money for use as capital)	23
16	Section DB 7 amended (Interest: most companies need no nexus with income)	23

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

17	Section DB 8 amended (Interest: money borrowed to acquire shares in group companies)	24
17B	New sections DB 20B and DB 20C inserted	24
	DB 20B Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence	24
	DB 20C Consideration for agreement to surrender leasehold estate or terminate licence	25
17C	Section DB 54 amended (Treatment of credits for investment fees)	26
18	Section DB 64 amended (Capital contributions)	26
19	New subpart DG inserted (Expenditure related to use of certain assets)	26
	Subpart DG—Expenditure related to use of certain assets	
	<i>Introductory provisions</i>	
	DG 1 What this subpart does	53
	DG 2 Application of this subpart	53
	DG 3 Meaning of asset for this subpart	54
	DG 4 Meaning of private use for this subpart	56
	DG 5 Meaning and treatment of interest expenditure for this subpart	58
	DG 6 Associated persons: company rule modified	59
	<i>When assets held simply</i>	
	DG 7 Expenditure related to income-earning use	59
	DG 8 Expenditure limitation rule	60
	DG 9 Apportionment formula	61
	<i>When assets held in corporate structures</i>	
	DG 10 Interest expenditure rules	63
	DG 11 Interest expenditure: close companies	64
	DG 12 Interest expenditure: group companies	66
	DG 13 Interest expenditure: corporate shareholders	68
	DG 14 Interest expenditure: non-corporate shareholders	71
	<i>Quarantined expenditure</i>	
	DG 15 Quarantined expenditure rules	72
	DG 16 Quarantined expenditure when asset activity negative	73
	DG 17 Allocation of amounts quarantined under section DG 16	74
	DG 18 Quarantined expenditure: group companies and shareholders	76

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

	DG 19 Allocation of amounts quarantined under section DG 18	78
<i>Certain modifications to rules</i>		
	DG 20 When income cannot be separately attributed	80
	DG 21 Opting out of treatment under this subpart	81
	DG 22 Application of rules to part years	82
20	Section DO 1 amended (Enhancements to land, except trees)	83
21	Section DO 2 amended (Erosion and shelter plantings)	83
22	Section DO 5 amended (Expenditure on land: planting of listed horticultural plants)	84
23	Section DO 11 amended (Improvement destroyed or made useless)	85
24	New section DV 25 inserted (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)	85
	DV 25 Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests	85
25	Section DW 4 amended (Deduction for general insurance outstanding claims reserve)	86
25B	New section DZ 21 (Expenditure on certain assets before 31 March 2013)	86
	DZ 21 Expenditure on certain assets before 31 March 2013	86
25C	Section EA 3 amended (Prepayments)	87
26	New section EC 4B inserted (Compulsory use of herd scheme method for associated persons)	87
	EC 4B Compulsory use of herd scheme method for associated persons	87
	EC 4C Value and timing of transfers	90
27	Section EC 7 amended (Valuation methods)	90
28	Section EC 8 replaced (Restrictions arising from use of herd scheme)	91
	EC 8 Restrictions arising from use of herd scheme	91
29	Section EC 11 amended (Restrictions on making elections)	93
30	Section EC 20 amended (Herd livestock disposed of before values determined)	93
31	Section EC 21 repealed (Herd livestock on death before values determined)	94

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

31B	New section ED 4 inserted (Valuation of certain excepted financial arrangements denominated in foreign currency)	94
	ED 4 Valuation of certain excepted financial arrangements denominated in foreign currency	94
31C	Section EE 7 amended (What is not depreciable property?)	95
32	Section EE 60 amended (Total deductions in section EE 56)	95
32B	New section EI 4B inserted (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence)	96
	EI 4B Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence	96
33	New subpart EM inserted (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)	98
	Subpart EM—Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests	
	EM 1 Australian non-attributing shares and attributing FDR method interests	98
	EM 2 Who does this subpart apply to?	99
	EM 3 What hedges does this subpart apply to?	100
	EM 4 Irrevocable elections	101
	EM 5 Fair dividend rate hedge portions	102
	EM 6 Income and expenditure for fair dividend rate hedge portions	105
	EM 7 Quarterly test of fair dividend rate hedge portions	106
	EM 8 Some definitions	108
33B	Section EW 8 amended (Election to treat certain excepted financial arrangements as financial arrangements)	109
34	Section EX 21 amended (Attributable CFC amount and net attributable CFC income or loss: calculation rules)	110
34B	Section EX 50 amended (Attributable FIF income method)	110
34C	Section EX 63 amended (Consequences of changes in method)	110
34D	New heading and sections EZ 64 to EZ 68 inserted	110
	<i>Restructuring under New Zealand Railways Corporation Restructuring Act 1990</i>	
	EZ 64 New Zealand Railways Corporation restructure: purpose and initial amounts for tax purposes	111

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

	EZ 65 Expenditure or loss incurred, and amounts derived	112
	EZ 66 Prepayments	112
	EZ 67 Leased assets	113
	EZ 68 Definitions	114
34E	Section FB 15 replaced (Specified livestock valued under herd scheme)	115
	FB 15 Specified livestock valued under herd scheme	115
34F	Section FM 31 amended (Eligibility rules)	115
34G	Section FN 4 amended (Eligibility rules)	115
34H	Section GB 24 amended (Exemption for genuine contracts)	115
35	Section GC 5 amended (Leases for inadequate rent)	115
36	Section HA 33 amended (Revocation of shareholders' elections: by event)	116
36B	Section HG 2 amended (Partnerships are transparent)	116
36C	Section HG 3 amended (General provisions relating to disposals)	116
36D	Section HM 12 amended (Income types)	116
36E	Section HM 19C amended (Modified rules for foreign investment variable-rate PIEs)	117
36F	Section HM 37 amended (When income cannot be attributed)	117
36G	Section HM 60 amended (Notified investor rates)	117
36H	New section IQ 2C inserted (Effect of FIF net loss if attributed FIF income method not available)	118
	IQ 2C Effect of FIF net loss if attributed FIF income method not available	118
36I	Section LA 6 amended (Remaining refundable credits: PAYE, RWT, and certain other items)	119
36J	Section LH 17 amended (Some definitions)	120
37	Section LK 1 amended (Tax credits relating to attributed CFC income)	120
37B	Section LP 2 amended (Tax credits for supplementary dividends)	120
37C	Section LP 5 amended (Application of benchmark dividend rules and imputation credit ratio)	120
37D	Section LP 8 amended (Relationship with exempt income rules)	121
38	Sections LZ 2 to LZ 5 repealed	121
39	Section MB 1 amended (Adjustments for calculation of family scheme income)	121

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

39B	New section MB 7B inserted (Family scheme income from employment benefits—employees not controlling shareholders)	121
	MB 7B Family scheme income from employment benefits—employees not controlling shareholders	121
39C	Section MB 8 amended (Family scheme income from fringe benefits)	122
39D	Section MD 16 amended (Calculation of parental tax credit abatement)	122
40	Section ME 3 amended (Meaning of net family scheme income)	122
41	Section OB 71 amended (Imputation additional tax on leaving wholly-owned group)	122
42	Section OB 72 amended (Imputation additional tax on joining wholly-owned group)	123
43	Section OB 72B amended (Limit on using entitlement to refund after joining wholly-owned group)	123
44	Section OP 6 amended (Provisions applying to consolidated imputation groups)	123
44B	Section RD 39 amended (Benefits provided by charitable organisations)	123
44C	Section RD 54 amended (Value of and payments towards fringe benefits)	123
45	Section RD 60 amended (Close company option)	124
46	Section RM 2 amended (Refunds for overpaid tax)	124
47	Section RM 4 amended (Overpayment on amended assessment)	124
48	Section RM 6 repealed (Refunds after 4-year period ends)	125
49	Section RM 10 amended (Using refund to satisfy tax liability)	125
50	Section RM 13 amended (Limits on refunds for ICA companies)	125
51	Section RM 17 amended (Treatment of further income tax paid)	125
52	Section RM 22 amended (Limits on refunds for Maori authorities)	125
53	Section RM 23 amended (Limits on refunds when Maori authority stops being Maori authority)	125
54	Section RM 26 amended (Treatment of further income tax paid)	125
55	Section RM 28 amended (Limits on refunds for PCA persons)	126

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

56	Section RM 33 amended (Limits on refunds for certain unit trusts and group investment funds)	126
57	Section YA 1 amended (Definitions)	126
57B	Section YB 11 amended (Trustee and person with power of appointment or removal)	131
57C	Section YB 14 amended (Tripartite relationship)	132
57D	New section YC 18C inserted (Railways restructure not affecting Crown economic ownership)	132
	YC 18C Railways restructure not affecting Crown economic ownership	133
58	Schedule 3 amended (Payment of provisional tax and terminal tax) amended	134
59	Schedule 17 amended (Types and classes of livestock)	134
60	Schedule 20 amended (Expenditure on farming, horticultural, aquacultural, and forestry improvements)	134
61	Schedule 32 amended (Recipients of charitable or other public benefit gifts)	135

Part 2

Amendments to other Acts

Amendments to Tax Administration Act 1994

62	Tax Administration Act 1994	135
63	Section 2 amended (Purpose of Act)	135
64	Section 16 amended (Commissioner may access premises to obtain information)	136
65	Section 16C amended (Power to remove and retain documents for inspection)	136
66	New section 30D inserted (Statements to shareholders when certain assets held by companies)	136
	30D Statements to shareholders when certain assets held by companies	136
66B	Section 31C amended (Notification requirements for multi-rate PIEs)	136
67	Section 41A amended (Returns by persons with tax credits for charitable or other public benefit gifts)	137
67B	Section 91C amended (Taxation laws in respect of which binding rulings may be made)	137
68	Section 120C amended (Definitions)	138
69	Section 125 amended (Certain rights of objection not conferred)	138
70	Section 138E amended (Certain rights of challenge not conferred)	138

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

71	Section 140C repealed (Transitional imputation penalty tax payable in some circumstances)	138
72	Section 184 amended (Refund of tax paid on income subsequently exempted by Order in Council)	138
<i>Amendments to Goods and Services Tax Act 1985</i>		
73	Goods and Services Tax Act 1985	139
74	Section 2 amended (Interpretation)	139
75	Section 5 amended (Meaning of term supply)	139
76	Section 9 amended (Time of supply)	140
77	Section 10 amended (Value of supply of goods or services)	141
77B	Section 10 amended (Value of supply of goods and services)	141
78	Section 11 amended (Zero-rating of goods)	141
79	Section 19 amended (Accounting basis)	142
80	Section 19A amended (Requirements for accounting on payments basis)	142
81	Section 19AB repealed (Local authorities accounting on payments basis on and after 1 July 2001)	142
82	Section 19C amended (Tax payable, or refund, where change in accounting basis)	142
83	Section 20 amended (Calculation of tax payable)	142
84	New section 20G inserted (Treatment of supplies of certain assets)	144
	20G Treatment of supplies of certain assets	144
85	Section 21B amended (Adjustments when person or partnership becomes registered after acquiring goods and services)	146
86	Section 21D amended (Calculating amount of adjustment)	146
87	Section 21G amended (Definitions and requirements for apportioned supplies and adjustment periods)	146
88	Section 26 amended (Bad debts)	147
89	Section 46 amended (Commissioner's right to withhold payments)	147
89B	Section 51 amended (Persons making supplies in course of taxable activity to be registered)	147
89C	Section 51B amended (Persons treated as registered)	147
89D	Section 51B amended (Registered person to notify change of status)	147
90	Section 52 amended (Cancellation of registration)	147
91	New sections 54B and 54C inserted	148
	54B Non-residents: registration	149

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

	54C Non-residents: cancellation of registration	150
92	Section 55 amended (Group of companies)	151
93	Section 60 amended (Agents and auctioneers)	151
94	Section 75 amended (Keeping of records)	152
94B	New section 78G inserted (Railways vesting: zero rating and timing of tax calculations and documents)	153
	78G Railways vesting: zero rating and timing of tax calculations and documents	154
95	New section 87 inserted (Change of accounting basis: transitional provision for certain local authorities)	154
	87 Change of accounting basis: transitional provision for certain local authorities	155
<i>Amendment to KiwiSaver Act 2006</i>		
96	Section 4 amended (Interpretation)	155
<i>Amendment to Student Loan Scheme Act 2011</i>		
97	Section 202 amended (Provisions of Tax Administration Act 1994 and Income Tax Act 2007 to apply to this Act)	156
<i>Amendments to Stamp and Cheque Duties Act 1971</i>		
98	Section 86I amended (Application of approved issuer levy and zero-rating)	156
98B	Section 86L amended (Refund of levy paid in error or in excess)	156
<i>Amendments to Income Tax Act 2004</i>		
99	Income Tax Act 2004	156
100	New section CD 21BA inserted (Issues to shareholders of rights to subscribe for or sell back shares)	156
	CD 21BA Issues to shareholders of rights to subscribe for or sell back shares	157
101	Section CR 3 amended (Income for general insurance outstanding claims reserve)	158
102	Section CW 25 replaced (Services for members of Parliament)	158
	CW 25 Services for members of Parliament	158
103	Section CX 11 replaced (Services for members of Parliament)	159
	CX 11 Services for members of Parliament	159
104	Section DW 3 amended (Deduction for general insurance outstanding claims reserve)	159
105	Section EC 7 amended (Valuation methods)	159

Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill		cl 2
105B	Section EE 7 amended (What is not depreciable property?)	160
106	Section EE 51 amended (Total deductions in section EE 47)	160
107	Section OB 1 amended (Definitions)	160
<i>Amendment to Social Security Act 1964</i>		
108	Section 70 amended (Rate of benefits if overseas pension payable)	161
<i>Non-resident investment companies Orders in Council</i>		
109	Non-resident investment companies Orders in Council revoked	161
<i>Amendment to Search and Surveillance Act 2012</i>		
110	Schedule amended (Powers in other enactments to which all or part of Part 4 of Search and Surveillance Act 2012 applies)	161
<i>Other remedial matters</i>		
111	Deletion of redundant LAQC legislation	162
Schedule		163
Deletion of redundant LAQC legislation		

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act **2012**.
- 2 Commencement** 5
- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) **Sections 100, 102, 103, 105, 105B, 106, and 107** are treated as coming into force on 1 April 2005.
- (3) **Sections 101 and 104** are treated as coming into force on 1 April 2006. 10
- (3B) Section 89D is treated as coming into force on 1 October 2007.

- (4) **Sections 5, 8, 12, 13, 25, 27, 32, 36, 37, 10B, 12, 13, 25, 27, 31C, 32, 33B(4), 36, 36C, 36I(2), 36J, 37, 37B, 37C, 37D, 39D, 45, 57(4), (16), (28), and (29), and 5858, and 67B** are treated as coming into force on 1 April 2008.
- (5) **Section 96(1)** is treated as coming into force on 5 January 2010. 5
- (6) ~~Section 23~~ **Sections 23, 57B, and 57C** ~~is~~ are treated as coming into force on 1 April 2010.
- (6B) **Section 3C** is treated as coming into force on 1 July 2010.
- (7) **Sections 36G and 71** ~~is~~ are treated as coming into force on 1 October 2010. 10
- (7B) **Section 36B** is treated as coming into force on 23 November 2010.
- (8) **Sections 14, 18, 20, 21, 34, and 57(6), (7), (26), and (30)** are treated as coming into force on 1 April 2011. 15
- (8B) **Sections 34B, 34C, and 36H** are treated as coming into force on 1 July 2011.
- (9) **Sections 28(1) and 29** are treated as coming into force on 18 August 2011.
- (9B) **Section 36E** is treated as coming into force on 29 August 2011. 20
- (9C) **Section 34H** is treated as coming into force on 1 October 2011.
- (10) **Sections 26, 28(2) and (3), 30, 31, 34E, and 57(8), (11), and (12)** are treated as coming into force on 28 March 2012. 25
- (10B) **Sections 3B, 30, 36D, 36F, and 59** are treated as coming into force on 1 April 2012.
- (11) **Section 98** is treated as coming into force on 7 May 2012.
- (12) **Section 57(5)** is treated as coming into force on 1 October 2012. 30
- (13) **Sections 22 and 60** are treated as coming into force on **the day of introduction of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill**.
- (14) **Section 94** is treated as coming into force on **the day of Royal assent for the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Bill**. 35
- (11B) **Section 12B** is treated as coming into force on 29 May 2012.

- (12) Sections 31B and 33B(1), (2), (3), and (5) are treated as coming into force on 27 September 2012.
- (13) Section 57(5) is treated as coming into force on 1 October 2012.
- (14) Section 94 is treated as coming into force on 2 November 2012. 5
- (14B) Sections 12C, 34D, 57(1B), (19C), (19D), (23B), (25B), (25C), (25D), and (25E), 57D, 74(2) and (3), and 94B are treated as coming into force on 31 December 2012.
- (15) Sections 4, 6, 7, 9, 10, 15, 16, 17, 19, 22, 25B, 25C, 32B, 35, 38, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57(1), (2), (3), (9), (5B), (10), (13), (14), (15), 17(18), (19), (19B), (20), (20B), (23), (24), (25), and (31), (31), and (32), 59, 60, 61, 66, 67, 69, 70, 72, 77(4), (2), and (4), 83(1), (3), (4), and (7), 84, 85, 86, 87, 96(3), 97, and 109 come into force on 1 April 2013. 10 15
- (16) ~~Section 80(4)~~ comes into force on 1 July 2013. Sections 13D and 80(1) come into force on 1 July 2013.
- (17) Sections 13B, 39B, 39C, 44B, 44C, 67, 68, 75(1), 77B, 78, 79, 80(2), 83(2), (5), and (6), 89, 89B, 89C, 90, 91, and 92 come into force on 1 April 2014. 20
- (18) Sections 64, 65, and 110 come into force immediately after the items relating to the Tax Administration Act 1994 in the Schedule of the Search and Surveillance Act 2012 come into force, or on 1 April 2014, whichever is first. 25

Part 1

Amendments to Income Tax Act 2007

- 3 Income Tax Act 2007
Sections 43B to 61 amend the Income Tax Act 2007. 30
- 3B Section CB 26 amended (Disposal of certain shares by portfolio investment entities)
In section CB 26(1)(b)(ii), replace “dividend.” with “dividend; and” and insert:

“(c) the entity attributes the proceeds from the disposal to investors who are not entitled to the benefit of the dividend.”

3C Section CB 36 amended (Disposal of emissions units)

In section CB 36(4), delete “for emissions”.

5

4 Section CC 1 amended (Land)

(1) After section CC 1(2), insert:

“Amounts derived from certain assets

“(2B) Despite subsections (1) and (2), an amount referred to in **section CW 8B** (Certain amounts derived from use of assets) is not a payment of rent or another amount for the purposes of this section.”

10

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

4B New sections CC 1B and CC 1C inserted

15

(1) After section CC 1, insert:

“CC 1B Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence

“When this section applies

“(1) This section applies when a person (the payee) derives an amount as consideration for the entry by the payee into an agreement for the grant, renewal, extension, or transfer of a right (the land right) that is a leasehold estate, or a licence to use land.

20

“Exception for payment to holder by transferee

25

“(2) This section does not apply to an amount derived—

“(a) by the payee as the holder of a land right; and

“(b) as consideration for the transfer of the land right to the person paying the amount.

“Income

30

“(3) The amount is income of the payee.

“Exception for tenant or licensee of residential premises

“(4) The amount is not income if a payee is a natural person and derives the amount as a tenant or licensee of residential premises

whose expenditure on the residential premises does not meet the requirements of the general permission.

“Relationship with other sections

“(5) This section is overridden by sections CC 1 and CG 8 (Capital contributions).

5

“Defined in this Act: amount, general permission, income, land, leasehold estate, pay.”

(2) After **section CC 1B**, insert:

“**CC 1C Consideration for agreement to surrender leasehold estate or terminate licence**

10

“When this section applies

“(1) This section applies when a person (the **payee**) derives an amount as consideration for the entry by the payee into an agreement, for the surrender or termination of a right (the **land right**) that is a leasehold estate or licence to use land, between—

15

“(a) the person who owns the estate in land from which the land right is granted; and

“(b) the person who owns the land right.

“Income

20

“(2) The amount is income of the payee.

“Exception for tenant or licensee of residential premises

“(3) The amount is not income if the payee is a natural person and derives the amount as a tenant or licensee of residential premises whose expenditure on the residential premises does not meet the requirements of the general permission.

25

“Relationship with other sections

“(4) This section is overridden by sections CC 1, CC 1B, CC 2, and CG 8 (Capital contributions).

“Defined in this Act: amount, general permission, income, land, leasehold estate, own.”

30

(3) **Subsection (1)** applies to an amount that is derived on or after 1 April 2013 in relation to a lease or licence entered, renewed, extended, or transferred on or after that date.

(4) **Subsection (2)** applies to an amount that is derived on or after 1 April 2013.

35

5 New section CD 29B inserted (Issues to shareholders of rights to subscribe for or sell back shares)

(1) After section CD 29, insert:

“CD 29B Issues to shareholders of rights to subscribe for or sell back shares

5

“Issue of rights to subscribe for shares

“(1) The issue by a company to a shareholder of a right to subscribe for a share, or to sell a share in the company to the company, is not a dividend.

“Issue of shares under rights to subscribe for shares

10

“(2) The issue by a company of a share to a person for consideration less than the market value, immediately before the issue, of a share in the same class of shares, is not a dividend if—

“(a) the person subscribes for the share under a right (a **subscription right**) issued by the company to a shareholder holding shares in the share class before the issue of the right; and

15

“(b) the company does not, as part of the issue of the subscription right, give the person a right to dispose of the share to the company.

20

“Premiums from issue of rights to subscribe for shares

~~“(3) A distribution by a company to a shareholder is not a dividend if—~~

~~“(a) the company issues to the shareholder a right (the **subscription right**) to subscribe for a share at a given price (the **subscription price**); and~~

25

~~“(b) the shareholder fails or is ineligible to exercise the subscription right; and~~

~~“(c) another person subscribes for the share corresponding to the subscription right at a price (the **clearing price**) of more than the subscription price; and~~

30

~~“(d) the distribution to the shareholder represents all or part of the difference between the clearing price and the subscription price.~~

“(3) A distribution by a company to a shareholder is not a dividend if—

35

“(a) the company issues to the shareholder a right (the **shareholder right**) to subscribe for, or dispose of to the com-

- pany, a share in the company at a given price (the **shareholder price**); and
- “(b) the shareholder fails or is ineligible to exercise the shareholder right; and
- “(c) another person pays to the company an amount— 5
- “(i) for the shareholder right;
- “(ii) greater than the shareholder price, for the issue of a share under the shareholder right; and
- “(d) the distribution is from the amount of the payment that does not increase the company’s available subscribed capital. 10
- “Defined in this Act: available subscribed capital, bonus issue in lieu, company, consideration, dividend, pay, share, shareholder”.
- (2) **Subsection (1)** applies for the 2008–09 and later tax years.
- 6 Section CD 40 amended (Adjustment if dividend recovered by company)** 15
- In section CD 40(4), replace “RM 6” with “RM 5”.
- 7 Section CD 41 amended (Adjustment if amount repaid later)**
- (1) In section CD 41(5), in the heading, replace “*RM 6*” with “*RM 5*”. 20
- (2) In section CD 41(5), replace “RM 6” with “RM 5”.
- 8 Section CR 4 amended (Income for general insurance outstanding claims reserve)**
- (1) After section CR 4(1), insert: 25
- “*When this section does not apply*
- “(1B) This section does not apply for contracts that section DZ 10 (General insurance with risk period straddling 1 July 1993) applies to.”
- (2) **Subsection (1)** applies for the 2008–09 income year and later 30 income years.

9 New section CV 18 inserted (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)

Before the heading to subpart CW, insert:

“CV 18 Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests 5

The amount of income that a person has under **section EM 6** (Income and expenditure for fair dividend rate hedge portions) is income of the person. 10

“Defined in this Act: amount, income”.

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

10 New section CW 8B inserted (Certain amounts derived from use of assets) 15

(1) After section CW 8, insert:

“CW 8B Certain amounts derived from use of assets

Income that a person derives from the use of an asset described in **section DG 3** (Meaning of asset for this subpart) is exempt income if the person— 20

“(a) meets the requirements of **section DG 21** (Opting out of treatment under this subpart); and

“(b) chooses under that section to treat the income as exempt income.

“Defined in this Act: asset, exempt income, income”² 25

“CW 8B Certain amounts derived from use of assets

“When this section applies

“(1) This section applies when a person derives income from the use of an asset described in section DG 3 (Meaning of asset for this subpart). 30

“When person opts out of assets expenditure rules

“(2) Income that the person derives from the use of the asset is exempt income if—

“(a) they meet the requirements of section DG 21 (Opting out of treatment under this subpart); and 35

“(b) they choose under that section to treat the income as exempt income.

“Below-market use and use by associates

“(3) An amount of income that the person derives in relation to the private use of an asset as described in **section DG 4(1)** (Meaning of private use for this subpart) is exempt income.

“Defined in this Act: amount, asset, exempt income, income”.

5

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

(2) **Subsection (1)** applies for the 2013–14 and later income years for an item of property referred to in **section DG 3(2)(a)(i)**. **Subsection (1)** applies for the 2014–15 and later income years for an item of property referred to in **section DG 3(2)(a)(ii) and (iii)**.

10

10B Section CW 16 amended (Allowance of Governor-General and other benefits and privileges)

After section CW 16(b), insert as a list of defined terms “exempt income”.

15

11 Section CW 28 amended (Pensions)

(1) In section CW 28(2)(a)(i), replace “Part 1 of the” with “that”.

(2) In section CW 28(2)(b), delete “but not to the extent of the equivalent amount of New Zealand superannuation, veteran’s pension, or income-tested benefit paid under section 70(3)(b) of that Act”.

20

(3) In section CW 28, in the list of defined terms, delete “income-tested benefit”.

12 Section CW 31 replaced (Services for members of Parliament)

25

(1) Replace section CW 31 with:

“CW 31 Services for members of Parliament

An amount is exempt income of a person to the extent to which it is income of the person and is not exempt income under another provision of subpart CW, if the amount is travel, accommodation, attendance, and communication services, as defined in section 20A(7) of the Civil List Act 1979, and,—

30

“(a) the amount is—

“(i) referred to in section 20A of that Act:

35

- “(ii) paid under section 25 of that Act; and
“(b) the amount is—
“(i) provided to a person to whom any of section 25(1)(b) to (e) of that Act applies:
“(ii) provided to a member of the family of a person 5
described in **subparagraph (i)**.
“Defined in this Act: amount, exempt income, income”.
- (2) **Subsection (1)** applies for the period beginning on the first day of the 2008–09 income year and ending on 30 September 2012. 10
- 12B Section CW 55BB amended (Minors’ income, to limited extent)**
- (1) Replace section CW 55BB(2)(a)(i) with:
“(i) a PAYE income payment from which the person’s employer is required to withhold tax under the PAYE rules:”. 15
- (2) In section CW 55BB, list of defined terms, insert “employer”, “PAYE rules”, and “tax”.
- (3) **Subsection (1)** applies for the 2012–13 and later tax years.
- 12C New heading and section CW 65 inserted** 20
After section CW 64, insert:
“*Restructuring under New Zealand Railways Corporation Restructuring Act 1990*
- “CW 65 New Zealand Railways Corporation restructure: exempt income 25
“*Railways vesting and land-related payments*
- (1) The following are exempt income of KiwiRail Holdings Limited and any company in which it directly or indirectly owns 100% of the shares (**wholly-owned subsidiary**):
“(a) an amount derived from the Railways vesting: 30
“(b) an amount derived by KiwiRail Holdings Limited or a wholly-owned subsidiary in relation to—
“(i) a disposal or grant of land, if that land is owned on 31 December 2012 by the Crown or New Zealand Railways Corporation: 35

- “(ii) the termination or variation of a lease granted by the Crown or New Zealand Railways Corporation over land, if that land is owned on 31 December 2012 by the Crown or New Zealand Railways Corporation. 5
- “*Meaning of Railways vesting*
- “(2) In this section, **Railways vesting** has the same meaning as in **section EZ 68** (Definitions).
- “Defined in this Act: amount, company, dispose, exempt income, land, lease, Railways vesting, share”. 10
- 13 Section CX 12 replaced (Services for members of Parliament)**
- (1) Replace section CX 12 with:
- “**CX 12 Services for members of Parliament**
- “*When fringe benefit arises* 15
- “(1) A fringe benefit arises when travel, accommodation, attendance, and communications services are exempt income under **section CW 31** (Services for members of Parliament).
- “*Relationship with sections CX 5 and CX 28*
- “(2) This section overrides sections CX 5 and CX 28. 20
- “Defined in this Act: exempt income, fringe benefit”.
- (2) **Subsection (1)** applies for the period beginning on the first day of the 2008–09 income year and ending on 30 September 2012.
- 13B Section CX 17 amended (Benefits provided to employees who are shareholders or investors) 25**
- (1) Insert after section CX 17(5)—
- “*Relationship with subpart DG*
- “(6) **Section DG 2(4)** (Application of this subpart) may apply to require a company to treat a benefit under this section as a dividend. 30
- (2) **Subsection (1)** applies for the 2013–14 and later income years for an item of property referred to in **section DG 3(2)(a)(i)**. **Subsection (1)** applies for the 2014–15 and later

income years for an item of property referred to in **section DG 3(2)(a)(ii) and (iii)**.

13C Section CX 25 amended (Benefits provided by charitable organisations)

- (1) Replace section CX 25(2), other than the heading, with: 5
- “(2) Subsection (1) does not apply, and the benefit provided is a fringe benefit, if a charitable organisation provides a benefit to an employee by way of short-term charge facilities and the value of the benefit from the short-term charge facilities for the employee in a tax year is more than the lesser for the tax year of— 10
- “(a) 5% of the employee’s salary or wages:
- “(b) \$1,200.”
- (2) Replace section CX 25(3)(a) and (b) with:
- “(a) enables an employee to obtain goods or services that have no connection with the employer or its operations by— 15
- “(i) buying or hiring the goods or services:
- “(ii) charging the cost of the goods or services to an account: 20
- “(iii) providing consideration other than money for the goods or services; and
- “(b) requires the employer to provide some or all of the payment or other consideration for the goods or services; and”. 25
- (3) In section CX 25, list of defined terms, insert “employer”, “salary or wages”, and “tax year”.

13D Section CX 33B inserted (Benefits for members of Parliament)

After section CX 33, insert: 30

“CX 33B Benefits for members of Parliament

Reasonable estimates may be used to determine, for the purposes of the FBT rules, what benefit provided under the Civil List Act 1979 to a member of Parliament is a fringe benefit, or excluded from being a fringe benefit, or valued at zero. 35

“Defined in this Act: FBT rules, fringe benefit”.

14 New section DA 5 inserted (Treatment of expenditure for commercial fit-out)

(1) After section DA 4, insert:

“DA 5 Treatment of expenditure for commercial fit-out

When applying the capital limitation to expenditure, to the extent to which the expenditure relates to a building’s item of commercial fit-out (the item), the expenditure is treated as relating to the item, and not the building.

“Defined in this Act: commercial fit-out, expenditure, capital limitation”.

(2) Subsection (1) applies for the 2011–12 and later income years.

15 Section DB 5 amended (Transaction costs: borrowing money for use as capital)

(1) After section DB 5(1), insert:

*“Relationship with sections DG 5 to DG 7, and DG 10*subpart DG

“(1B) **Sections DG 5 to DG 7, and DG 10** (which relate to the treatment of interest expenditure for certain assets) override this section. Subpart DG (Expenditure related to use of certain assets) overrides this section for expenditure to which that subpart relates.”

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

16 Section DB 7 amended (Interest: most companies need no nexus with income)

(1) After section DB 7(6), insert:

*“Relationship with sections DG 5 to DG 7, and DG 10*subpart DG

“(6B) **Sections DG 5 to DG 7, and DG 10** (which relate to the treatment of interest expenditure for certain assets) override this section. Subpart DG (Expenditure related to use of certain assets) overrides this section for expenditure to which that subpart relates.”

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

17 Section DB 8 amended (Interest: money borrowed to acquire shares in group companies)

(1) After section DB 8(6), insert:

“Relationship with sections DG 5 to DG 7, and DG 10 subpart DG

5

“(6B) **Sections DG 5 to DG 7, and DG 10** (which relate to the treatment of interest expenditure for certain assets) override this section. **Subpart DG** (Expenditure related to use of certain assets) overrides this section for expenditure to which that subpart relates.”

10

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

17B New sections DB 20B and DB 20C inserted

(1) After section DB 20, insert:

DB 20B Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence

15

“When this section applies

“(1) This section applies when—

“(a) a person (the **payer**) incurs an amount of expenditure as consideration for the entry by another person (the **payee**) into an agreement for the grant, renewal, extension, or transfer of a right (the **land right**) that is a leasehold estate, or a licence to use land; and

20

“(b) the payer is the person who owns—

“(i) the land right;

25

“(ii) the estate in land from which the land right is granted; and

“(c) the payee is the person who is obtaining the land right; and

“(d) the amount is not included in the cost of depreciable intangible property.

30

“Deduction

“(2) The payer is allowed a deduction for the amount.

“Relationship with subpart DA

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

“Defined in this Act: amount, capital limitation, deduction, depreciable intangible property, estate, general limitation, general permission, land, leasehold estate, own”.

5

(2) After **section DB 20B**, insert:

“DB 20C Consideration for agreement to surrender leasehold estate or terminate licence

10

“When this section applies

“(1) This section applies when—

“(a) a person (the **payer**) incurs an amount of expenditure to a person (the **payee**) as consideration for the entry by the payee into an agreement for the surrender or termination of a right (the **land right**) that is a leasehold estate or licence to use land; and

15

“(b) the payer is a person who owns the land right or a person who owns the estate in land from which the land right is granted; and

20

“(c) the payee is a person who owns the estate in land from which the land right is granted or a person who owns the land right.

“Deduction

“(2) The payer is allowed a deduction for the amount.

25

“Relationship with subpart DA

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

“Defined in this Act: amount, capital limitation, deduction, estate, general limitation, general permission, land, leasehold estate, own”.

30

(3) **Subsection (1)** applies to an amount that is incurred on or after 1 April 2013 in relation to a lease or licence entered, renewed, extended, or transferred on or after that date.

(4) **Subsection (2)** applies to an amount that is incurred on or after 1 April 2013.

35

17C Section DB 54 amended (Treatment of credits for investment fees)

The heading for section DB 54 is replaced by “No deductions for fees relating to interests in multi-rate PIEs”.

18 Section DB 64 amended (Capital contributions)

5

(1) Replace section DB 64(1)(b) with:

“(b) in the absence of this section, the person would be allowed a deduction for the relevant capital contribution property, or for the relevant expenditure for the capital contribution property; and”.

10

(2) Replace section DB 64(2) with:

“Deductions

“(2) For the purposes of quantifying the amount of depreciation loss under subpart EE (Depreciation) in relation to the capital contribution property or the amount of deduction under sub-

15

part DO (Farming and aquacultural business expenditure) in relation to expenditure for the capital contribution property,—
“(a) the capital contribution property’s adjusted tax value, base value, cost, or value, as applicable, is reduced by the amount of the capital contribution, under subpart

20

EE:
“(b) the relevant expenditure for the capital contribution property is reduced by the amount of the capital contribution, under subpart DO.”

(3) In section DB 64, in the list of defined terms, insert “capital contribution property” and “expenditure”.

25

(4) **Subsections (1) to (3)** apply for the 2011–12 and later income years.

19 New subpart DG inserted (Expenditure related to use of certain assets)

30

(1) After section DF 5, insert:

“Subpart DG—Expenditure related to use
of certain assets

“*Introductory provisions*

“**DG 1** What this subpart does

This subpart sets out the rules for the deductibility and appor- 5
tionment of expenditure incurred for an income year in relation
to an asset when the asset is used partly for the purpose of de-
riving income and partly for private purposes; and for a time
during the income year, the asset is not in use.

“Defined in this Act: asset, deduction, income, income year 10

“**DG 2** Application of this subpart

“*Asset by asset*

“(1) The rules in this subpart apply on an asset by asset basis.

“*Relationship with sections DB 5, DB 7, and DB 8*

“(2) The rules in this subpart override sections DB 5, DB 7, and 15
DB 8 (which relate to deductions for interest expenditure) in
relation to interest expenditure that is required to be appor-
tioned under **section DG 9**.

“*Relationship with subpart DD*

“(3) Subpart DD (Entertainment expenditure) does not apply to ex- 20
penditure incurred in relation to an asset to which this subpart
applies.

“*Application to companies*

“(4) The rules in this subpart do not apply to a company other than 25
a close company and, for the purposes of this subpart, a refer-
ence in the definition of **close company** to a natural person is
treated as a reference to a person.

“*Application to groups of, and interests in, companies*

“(5) For the purposes of this subpart,—

“(a) a group of companies is treated as a wholly-owned 30
group of companies:

“(b) a voting interest in a company includes a market value interest when a market value circumstance exists for the company.

“Defined in this Act: asset; close company; company; deduction; group of companies; interest expenditure; market value circumstance; market value interest; voting interest; wholly-owned group of companies 5

“**DG 3 Meaning of asset for this subpart**

“*Meaning of asset*

“(1) For the purposes of this subpart, an **asset**, for a person and an income year, means an item of property— 10

“(a) that a person uses partly for deriving income and partly for private use; and

“(b) that—

“(i) is comprised of land, including improvements to land; 15

“(ii) has a cost to the person, of \$50,000 or more; and

“(c) that is not in use—

“(i) for at least 62 days in the income year; or

“(ii) when the asset is typically used only on working days, for at least 62 working days in the income year. 20

“*Exclusions*

“(2) Despite **subsection (1)**, an asset for the purposes of this subpart does not include—

“(a) a motor vehicle; 25

“(b) an asset whose expenditure, or a part of it, is apportioned for tax purposes on the basis of space, floor area, or another similar basis.

“*What constitutes use*

“(3) For the purposes of this subpart, the use of an asset is the active use of the asset for its intended purpose. 30

“*Cost of asset*

“(4) In **subsection (1)(b)(ii)**, **sections DG 11(8)(a)(ii) and DG 16(1)(b)(ii)**, for an asset to which this subpart applies, the **cost** of the asset means the cost of the asset to the person, entity, partnership, limited partnership, or joint venture, excluding expenditure for which they are allowed a deduction 35

under a provision of this Act outside this subpart, other than an amount of depreciation loss.

“Defined in this Act: amount; asset; cost; deduction; depreciation loss; income; income year; land; limited partnership; partnership; private use; tax; working day

5

“**DG 4 Meaning of private use for this subpart**

“*What is private use?*

“(1) For the purposes of this subpart, **private use**, for an asset and a person, means the use of the asset by the person or a person associated with them, regardless of whether the use is exclusive; or whether the person derives an amount of income in relation to the use.

10

“*Private use when return below market value*

“(2) If the income derived by the person from the use of the asset is an amount that is less than the market value amount, the use is treated as private use. For the purposes of this subpart, **market value** means the price at which the asset is provided for use at a particular time or for a particular season—

15

“(a) in the open market; and

“(b) freely offered; and

20

“(c) made on ordinary terms; and

“(d) to a member of the public at arm’s length.

“*Exclusion from private use*

“(3) Despite **subsection (1)**, the use of an asset by a person does not amount to private use if—

25

“(a) the asset is the kind of asset that requires expert or specialist knowledge in order for it to be used; and

“(b) the person has the required expert or specialist knowledge; and

“(c) the income derived directly or indirectly from the use of the asset is a market value amount; and

30

“(d) the amount derived includes an amount paid for the services of the person.

“*Associated persons*

“(4) In **subsection (3)**, a person includes a person associated with them.

35

Example

Mary uses her yacht privately; rents it to her brother at market value; rents it to unrelated people at market value; and occasionally rents it at less than market value to friends. The use of the yacht by Mary, her brother, and her friends is regarded as private use. When the yacht is rented at market value to unrelated people, the use is not regarded as private use. And despite the market rent paid by her brother, his use of the yacht remains private use.

“Defined in this Act: amount; asset; associated person; income; market value; pay; private use

“DG 5 Meaning of interest expenditure for this subpart

“Interest expenditure

“(1) In this subpart, **interest expenditure**, for a person to whom this subpart applies, means expenditure on interest, and includes an amount of interest on the sum of the outstanding balances of—

“(a) financial arrangements entered into by the person, if the financial arrangement—

“(i) provides funds to the person; and

“(ii) gives rise to an amount for which the person would have a deduction;

“(b) fixed-rate foreign equity or fixed-rate shares that are—

“(i) issued by the person; and

“(ii) held by a person resident in New Zealand;

“(c) stapled debt securities—

“(i) issued by the person; and

“(ii) held by a resident in New Zealand; and

“(iii) stapled to shares other than shares of a company that is a proportional-stapling company.

“Exchange rate fluctuations

“(2) **Subsection (1)** does not include a deduction for an amount that arises only from movement in currency exchange rates.

“Defined in this Act: amount; company; deduction; financial arrangement; fixed-rate foreign equity; fixed-rate share; interest; interest expenditure; proportional-stapling company; resident in New Zealand; share; stapled debt security

“DG 6 Associated persons: company rule modified

Despite section YB 3(1) (Company and person other than company); for the purposes of this subpart, a company and a person other than a company are associated persons if—

- “(a) the person has a voting interest in the company of 5% or more; or
- “(b) the person’s share in the company gives them a right to use the asset.

“Defined in this Act: asset; associated person; company; share; voting interest

“When assets held simply

“DG 7 Expenditure related to income-earning use

“Expenditure on certain business and regulatory requirements

“(1) A person is allowed a deduction for expenditure or loss, including an amount of depreciation loss, to the extent to which the amount incurred—

- “(a) relates solely to the use of an asset for deriving income of the person; and
- “(b) is expenditure—

“(i) from which the person would not reasonably expect to receive a personal benefit:

“(ii) that the person must reasonably incur to meet a regulatory requirement so that they may use the asset for deriving income and that would not have been incurred but for the requirement.

“Expenditure that must be apportioned

“(2) Despite **subsection (1)** and for the avoidance of doubt, all expenditure on repairs and maintenance incurred in relation to an asset must be treated as expenditure that is limited under **section DG 8**.

Example

Mike operates a charter boat which he also uses privately. He incurs expenses including advertising costs; costs in meeting Maritime New Zealand survey requirements; and general maintenance costs. The advertising costs are fully deductible because they deliver no private benefit. The survey costs are fully deductible if they are incurred only for charter purposes. The maintenance costs are not deductible under this provision be-

Example—*continued*

cause they deliver a personal benefit as well as an income-earning benefit. A portion of these maintenance costs may be allowed as a deduction under **section DG 8**:

“Defined in this Act: amount, asset, deduction, depreciation loss, income

“DG 8 Expenditure limitation rule 5

“What this section applies to

“(1) This section applies to an amount of expenditure or loss, including an amount of depreciation loss, that a person incurs for an income year in relation to an asset.

“Limited deduction 10

“(2) The person is allowed a deduction for the income year to the extent of the amount calculated using the formula in **section DG 9(2)**:

“Treatment of interest expenditure

“(3) For the purposes of **subsection (2)** and the apportionment formula,—

“(a) if the person is not a company, interest expenditure incurred in relation to the asset is included in the item **expenditure** in **section DG 9(3)(a)**:

“(b) if the person is a company, interest expenditure incurred in relation to the asset is apportioned under **section DG 11**:

“Depreciation recovery and loss on disposal

“(4) In the treatment of assets generally,—

“(a) depreciation recovery income on disposal is dealt with in section EE 49 (Amount of depreciation recovery income when item partly used for business):

“(b) depreciation loss on disposal is dealt with in sections EE 44 to EE 48, and EE 50(6) and (7) (which relate to amounts of depreciation loss): 30

“Relationship with other sections

“(5) This section—

“(a) supplements the general permission and overrides the private limitation, but the other limitations still apply:

“(b) overrides section EE 50(2) (Amount of depreciation loss when item partly used to produce income):

Example

Jim rents out his aeroplane at market value for 100 hours in an income year, and uses it for his personal enjoyment for 50 hours. Jim incurs general expenditure of \$10,000 in relation to the use of the plane. He may deduct two thirds of the expenditure (**section DG 9(2)**). The formula is $\$10,000 \times (100/(100 + 50)) = \$6,666.67$.

“Defined in this Act: amount; asset; business; company; deduction; depreciation loss; depreciation recovery income; general permission; interest expenditure; private limitation

“DG 9 Apportionment formula

“What this section does

“(1) This section provides the formula for use in **sections DG 8 and DG 11 to DG 13** to calculate the way in which an amount of expenditure or loss is apportioned in relation to the income-earning use and private use of an asset:

“Formula

“(2) The apportionment formula is—

$$\text{expenditure} \times \frac{\text{income-earning days}}{(\text{income-earning days} + \text{private days})}$$

“Definition of items in formula

“(3) In the formula,—

“(a) **expenditure** is the total expenditure or loss that is incurred by the person for an income year in relation to the asset, and that would be deductible in the absence of this subpart, other than expenditure that is—

- “(i) related solely to the income-earning use of the asset as described in **section DG 7**; or
- “(ii) related solely to the private use of the asset:

“(b) **income-earning days** is the total number of days in the income year for which the person derives income from the use of the asset when the amount of income derived is an amount that is equal to or more than the mar-

ket value amount, including any days on which the use made of the asset is use described in **section DG 4(3)**:
“(e) **private days** is the total number of days in the income year on which the asset is in active use, and the day is not an income-earning day as described in **paragraph (b)**.” 5

“Other units of measurement

“(4) A unit of measurement of time other than days, whether relating to hours, or nights, or anything else, is to be used in the formula and in **subsection (3)(b) and (c)**, if it achieves a more appropriate apportionment. For this purpose, the same unit must be used in relation to both items in **subsection (3)(b) and (c)**.” 10

“Defined in this Act: amount; asset; deduction; income; income year; market value; private use 15

“When assets held in complex structures

“DG 10 Interest expenditure rules

Sections DG 41 to DG 44 provide for the apportionment of interest expenditure incurred by a company that holds an asset to which this subpart applies, and by other companies that are in the same group of companies as the company, and by shareholders. Companies must provide information disclosure statements under **section 30D** of the Tax Administration Act 1994 to enable the calculations to be made.” 20

“Defined in this Act: asset; company; group of companies; interest expenditure; shareholder 25

“DG 11 Interest expenditure: close companies

“What this section does

“(1) This section quantifies the amount of a deduction that a close company is allowed for an income year when— 30

“(a) the company holds an asset to which this subpart applies; and

“(b) the company incurs interest expenditure for the income year.

“Determining values and deductions

“(2) The company must first determine the amount of its debt value and its asset value for the income year, and then apply either **subsection (3)** or **subsections (4) to (6)**:

“Debt value less than asset value

5

“(3) If the debt value for the income year is equal to or less than the asset value for the income year, the company is allowed a deduction of a portion of interest expenditure incurred for the income year—

“(a) of an amount calculated using the formula in **section DG 9(2)**; and

10

“(b) treating the company’s total interest expenditure for the income year as if it were the item **expenditure** in the formula:

“Debt value more than asset value

15

“(4) If the debt value for the income year is more than the asset value for the income year, the company must calculate a reduced amount of interest expenditure for the income year using the formula—

$$\text{interest expenditure} \quad \times \quad \frac{\text{company's asset value}}{\text{company's debt value.}}$$

“Definition of items in formula

20

“(5) In the formula,—

“(a) **interest expenditure** is the total amount of interest expenditure incurred by the company for the income year:

“(b) **company’s asset value** is the amount of the company’s asset value for the income year:

25

“(c) **company’s debt value** is the amount of the company’s debt value for the income year:

“Apportionment of reduced amounts

“(6) The company is allowed a deduction for the income year of a portion of the reduced amount described in **subsection (4)**—

30

“(a) of an amount calculated using the formula in **section DG 9(2)**; and

“(b) treating the reduced amount as if it were the item **expenditure** in the formula:

“Net asset balance

“(7) When **subsection (3)** applies for an income year, the amount that remains outstanding after subtracting the debt value for the income year from the asset value for the income year (the **net asset balance**); must be used under **sections DG 12 to DG 14**, as applicable. 5

“Meaning of debt value and asset value

“(8) For the purposes of this subpart,—

“(a) **asset value** means the value of the asset at the end of an income year, using— 10

“(i) for land, including an improvement to land, the amount given by the later of either its most recent rating or its cost on acquisition (or its market value, if the transaction involves an associated person): 15

“(ii) for other property, its cost to the person:

“(b) **debt value** means the average outstanding amount that gives rise to the interest payable by the company, measured by reference to the amounts outstanding at the start of and at the end of an income year. 20

Example

Holiday Home Ltd holds a holiday home with a rateable value of \$200,000. The company has debt of \$40,000, with associated interest expenditure of \$4,000. Since the debt value is less than the asset value, all the interest expenditure must be apportioned (**section DG 11(3)**). 25

Boat Ltd has a charter boat that costs \$60,000. The company has debt of \$100,000, with associated interest expenditure of \$10,000. Since the debt value is more than the asset value, the company must apportion interest expenditure of \$6,000 (**section DG 11(4)-(6)**). The formula is $\$10,000 \times (\$60,000/\$100,000) = \$6,000$. 30

“Defined in this Act: amount, asset, asset value, associated person, close company, cost, debt value, deduction, income, income year, interest, interest expenditure, land, market value, pay 35

“DG 12 Interest expenditure: group companies

“When this section applies

“(1) This section applies for an income year when—

- “(a) a close company (**company A**) has a net asset balance; and
- “(b) company A is a member of the same group of companies as another company (**company B**); and
- “(c) company B has interest expenditure for which it is allowed a deduction: 5

“How this section applies: looping rule

- “(2) This section applies sequentially to every group company B until—

- “(a) the net asset balance for the income year is reduced to zero; or is treated as reduced to zero; or 10
- “(b) no other group companies exist to which this section applies:

“Debt value less than net asset balance

- “(3) If company B’s debt value for the income year is equal to or less than the net asset balance for the income year, company B is allowed a deduction of a portion of interest expenditure incurred for the income year,— 15

- “(a) of an amount calculated using the formula in **section DG 9(2)**; and 20
- “(b) treating company B’s total interest expenditure for the income year as if it were the item **expenditure** in the formula:

“Recalculation of net asset balance

- “(4) In the application of **subsection (3)**, the amount of the net asset balance must be recalculated on each application; being reduced by an amount equal to each counted group company’s debt value: 25

“Debt value more than net asset balance

- “(5) If company B’s debt value for the income year is more than the net asset balance for the income year, company B must calculate a reduced amount of interest expenditure for the income year using the formula— 30

$$\text{interest expenditure} \quad \times \quad \frac{\text{net asset balance}}{\text{company B's debt value.}}$$

“Definition of items in formula

- “(6) In the formula,—
- “(a) **interest expenditure** is the total amount of interest expenditure incurred by company B for the income year:
 - “(b) **net asset balance** is the amount of the net asset balance 5 for the income year:
 - “(c) **company B’s debt value** is the amount of company B’s debt value for the income year.

“Apportionment of reduced amounts

- “(7) Company B is allowed a deduction for the income year of a 10 portion of the reduced amount described in **subsection (5)**,—
- “(a) of an amount calculated using the formula in **section DG 9(2)**; and
 - “(b) treating the reduced amount as if it were the item **expenditure** in the formula. 15

“Net asset balance zero

- “(8) Once a calculation is made under **subsection (5)**, company B’s net asset balance is treated as zero:

“Net asset balance

- “(9) If a net asset balance remains outstanding after the application 20 of this section for an income year, the amount must be used under **sections DG 13 and DG 14**, as applicable:

Example

Holiday Home Ltd has an asset balance of \$160,000 (\$200,000 less \$40,000) and is wholly owned by Parent Ltd. Parent has 25 debt of \$30,000, with associated interest expenditure of \$3,000. Since Parent’s debt value is less than the net asset balance, all of Parent’s interest expenditure must be apportioned (**section DG 12(3)**):

“Defined in this Act: amount; asset value; close company; company; debt value; 30 deduction; group of companies; income year; interest expenditure

“DG 13 Interest expenditure: corporate shareholders

“When this section applies

- “(1) This section applies when—
- “(a) a net asset balance remains outstanding for an income 35 year after the application of—

- “(i) first, **section DG 12**, if applicable; or
- “(ii) secondly, **section DG 11**; and
- “(b) † or more of the following companies, none of which is a member of a group of companies that includes company A, exists:
 - “(i) a company that is a shareholder in company A: 5
 - “(ii) a company that is a shareholder in a company that is a member of the same group of companies as company A and has a voting interest in company A: 10
 - “(iii) a company that has a voting interest in a company referred to in **subparagraph (i) or (ii)**:

“How this section applies: looping rule

- “(2) This section applies sequentially as follows:
 - “(a) first, to the companies referred to in **subsection (1)(b)(i) and (ii)**; and 15
 - “(b) secondly, to the extent to which the debt value of the company for the income year remains less than the company’s share of the net asset balance; to the companies that are shareholders in a company referred to in **paragraph (a)**; and 20
 - “(c) so on, until either—
 - “(i) the company’s share of the net asset balance for the income year is reduced to zero or is treated as reduced to zero; or 25
 - “(ii) no other corporate shareholders exist to which this section applies.

“Limitation by share in asset balance

- “(3) The deduction that the company is allowed for interest expenditure incurred for the income year is limited by their share of the net asset balance. The share of the asset balance is calculated using the formula— 30

net asset balance × company’s interest:

“Definition of items in formula

- “(4) In the formula in **subsection (3)**,—

- “(a) **net asset balance** is the amount of the net asset balance after the application of **section DG 11 or DG 12**, as applicable, and as recalculated under **subsection (6)**;
- “(b) **company’s interest** is the relevant voting interest in company A, expressed as a percentage. 5
- “Debt value less than asset balance*
- “(5) If the debt value for the company for the income year is equal to or less than its share of the net asset balance for the income year, the company is allowed a deduction of a portion of interest expenditure incurred for the income year,— 10
- “(a) of an amount calculated using the formula in **section DG 9(2)**; and
- “(b) treating the total interest expenditure for the income year as if it were the item **expenditure** in the formula.
- “Recalculation of asset balance* 15
- “(6) In the application of **subsection (5)**, the amount that is the company’s share of the net asset balance must be recalculated on each application, being reduced by an amount equal to each counted company’s debt value:
- “Debt value more than asset balance* 20
- “(7) If the debt value for the company for the income year is more than its share of the net asset balance, the company must calculate a reduced amount of interest expenditure incurred for the income year using the formula—
- $$\text{interest expenditure} \times \frac{\text{company's share of net asset balance}}{\text{company's debt value}}$$
- “Definition of items in formula* 25
- “(8) In the formula in **subsection (7)**,—
- “(a) **interest expenditure** is the total amount of interest expenditure incurred by the company for the income year;
- “(b) **company’s share of net asset balance** is the amount calculated for the company under **subsection (3)**; 30
- “(c) **company’s debt value** is the amount of the debt value of the company for the income year.

“Apportionment of reduced amounts

- “(9) The company is allowed a deduction for the income year of a portion of the reduced amount described in **subsection (7)**,—
 “(a) of an amount calculated using the formula in **section DG 9(2)**; and 5
 “(b) treating the reduced amount as if it were the item **expenditure** in the formula.

“Net asset balance zero

- “(10) Once a calculation is made under **subsection (7)**, the amount that is the company’s share of the net asset balance is treated as zero. 10

“Net asset balance

- “(11) If a net asset balance remains outstanding after the application of this section for an income year, the amount must be used under **section DG 14**. 15

Example

Parent Ltd has 2 equal corporate shareholders, company Y, which has debt of \$20,000 with associated interest expenditure of \$2,000, and company Z, which has debt of \$70,000 with associated interest expenditure of \$7,000. Each company’s share of the net asset balance is \$65,000 (\$130,000 × 50%). Since company Y’s debt value is less than its share of the net asset balance, all of its interest expenditure must be apportioned (**section DG 13(5)**). Company Z’s debt value is greater than its share of the net asset balance, so it must apportion interest expenditure of \$6,500 (**section DG 13(7)–(9)**). The formula is $\$7,000 \times (\$65,000/\$70,000) = \$6,500$. 20 25

“Defined in this Act: amount; company; debt value; deduction; group of companies; income year; interest expenditure; shareholder; voting interest

“DG 14 Interest expenditure: non-corporate shareholders 30

“When this section applies

- “(1) This section applies for an income year when—
 “(a) a net asset balance remains outstanding for an income year after the application of—
 “(i) first, **section DG 13**, if applicable; 35
 “(ii) secondly, **section DG 12**, if applicable;
 “(iii) thirdly, **section DG 11**, if neither applies; and

- “(b) a person exists who—
 - “(i) is not a company, other than a company acting as a trustee; and
 - “(ii) has a voting interest in company A; and
 - “(iii) has interest expenditure for which they are allowed a deduction.

“Amount to be apportioned

- “(2) For a natural person, the amount of interest expenditure that must be apportioned is only the amount of interest that the person incurs on money borrowed to acquire shares in company A or in a company referred to in **section DG 13(1)(b)**.

“Method of apportionment

- “(3) The apportionment is made using the rules set out in **section DG 13(2) to (10)**, treating the person as if they were the company.

Example

Company Y has 2 shareholders: Thomas, who has borrowed \$200,000 to acquire a 50% interest in the company; and Brent, who has borrowed \$10,000 to buy his 50% interest. Each has a 50% share of the remaining net asset balance of \$45,000. The formula is $(\$65,000 - \$20,000) \times 50\% = \$22,500$. Since Thomas's debt value is greater than his share of the net asset balance, he must apportion 11.25% of his total interest expenditure (**sections DG 14 and DG 13(7)-(9)**). The formula is $22,500/200,000$. Since Brent's debt value is less than his share of the net asset balance, all of his interest expenditure must be apportioned (**sections DG 14 and DG 13(5)**).

“Defined in this Act: amount, company, deduction, income year, interest, interest expenditure, share, trustee, voting interest

“Quarantined expenditure 30

“DG 15 Quarantined expenditure rules

Sections DG 16 and DG 18 provide the rules that limit the amount of a person's deduction under **sections DG 7, DG 8, and DG 11 to DG 14** for an income year when the income derived from the use of the asset does not reach a specified threshold. The excess expenditure is quarantined and denied as a deduction for the income year. **Sections DG 17 and**

DG 19 provide for the allocation of the quarantined amount to a later income year when the income derived is sufficient to offset the expenditure. Companies must provide information disclosure statements under **section 30D** of the Tax Administration Act 1994 to enable the calculations to be made. 5

“Defined in this Act: amount; asset; company; deduction; income; income year

“DG 16 Quarantined expenditure when asset activity negative

“When this section applies

“(1) This section applies when—

“(a) a person incurs expenditure for which they are allowed a deduction that is limited under **section DG 8 or DG 11**, as applicable, for an income year; and 10

“(b) the amount of income derived for the income year from the use of an asset, other than an amount of income derived from an associated person, is less than 2% of— 15

“(i) for land, including an improvement to land, the amount given by the later of either its most recent rating or its cost on acquisition (or its market value, if the transaction involves an associated person); 20

“(ii) for other property, the cost to the person.

“Quarantined amount

“(2) The amount of the person’s excess expenditure for the income year is calculated using the formula—

$$\text{expenditure} = \text{asset income.}$$

“Definition of items in formula

“(3) In the formula,—

“(a) **expenditure** is the total of the following amounts:

“(i) the total amount of deductions that the person is allowed for the income year under **sections DG 7, DG 8, and DG 11**, as applicable and after any necessary apportionment; and 30

“(ii) an amount of the person that was quarantined under this section for an earlier income year and is not yet allocated to an income year:

“(b) **asset income** is the total amount of income derived for the income year from the use of the asset.

“*No deduction for quarantined amount*

“(4) The excess expenditure calculated under **subsection (2)** is quarantined or remains quarantined, as applicable, and denied as a deduction for the income year. 5

“*Outstanding profit balance*

“(5) If the amount of expenditure for the income year is less than the amount of income for the income year, the excess income is the **outstanding profit balance** for the income year to be used under **section DG 18**. If the amount of expenditure for the income year is equal to or more than the amount of income for the income year, the outstanding profit balance is treated as zero. 10

“*Zero result*

“(6) For the purposes of the formula in **subsection (2)**, if the amount of income for the income year is greater than the amount of expenditure for the income year, the result of the formula is treated as zero. 15

Example 20

David has a city apartment with a rateable value of \$300,000. He rents out the apartment and also uses it privately. He receives rent of \$4,000 from non-associates, and \$6,000 from associates. David’s total allowable expenditure, under **sections DG 7, DG 8, and DG 11**, is \$15,000. Since David’s income from non-associates is less than 2% of the apartment’s rateable value, the excess expenditure of \$5,000 is quarantined under **section DG 16** and denied as a deduction. The amount quarantined may be allocated to a later income year under **section DG 17**. 25 30

“Defined in this Act: amount; asset; associated person; cost; deduction; income; income year; land; market value

“**DG 17 Allocation of amounts quarantined under section DG 16**

“*When this section applies* 35

“(1) This section applies for an income year (the **current year**) when—

“(a) a person has an amount of excess expenditure quarantined under **section DG 16** for an income year before the current year; and

“(b) the income that the person derives from the use of the asset for the current year is more than the amount of their deductions under **sections DG 7, DG 8, and DG 11**; as applicable. 5

“Deduction and allocation

“(2) The amount of previously quarantined expenditure that the person is allowed as a deduction for the current year must not be more than the lesser of— 10

“(a) the amount referred to in **subsection (1)(a)**;

“(b) the amount calculated using the formula—

asset income – expenditure.

“Definition of items in formula

“(3) In the formula,— 15

“(a) **asset income** is the total amount of income derived for the current year from the use of the asset:

“(b) **expenditure** is the total amount of deductions that the person is allowed for the current year under **sections DG 7, DG 8, and DG 11**; as applicable and after any necessary apportionment. 20

“Outstanding profit balance

“(4) If the lesser amount in **subsection (2)** is the quarantined amount referred to in **subsection (2)(a)**; an **outstanding profit balance** arises of an amount that is the difference 25 between the amount of income for the current year and the amount of expenditure for the current year, including the quarantined amount allocated to the current year. The outstanding profit balance is available for use under **section DG 19**.

“Zero result 30

“(5) For the purposes of the formula in **subsection (2)**, if the amount of expenditure for the current year is greater than the amount of income for the current year, the result of the formula is treated as zero.

Example, continued

In the following income year, David derives \$10,000 from renting his city apartment. David's total allowable expenditure, under **sections DG 7, DG 8, and DG 11**, is \$8,000. He also has expenditure of \$5,000 quarantined from the previous income year. David is able to deduct \$2,000 of that quarantined expenditure. The remaining \$3,000 continues to be quarantined and may be allowed as a deduction in a later income year under **section DG 17**.

5

“Defined in this Act: amount; asset; deduction; income; income year

10

“DG 18 Quarantined expenditure: group companies and shareholders

“When this section applies

“(1) This section applies when—

- “(a)** a person incurs expenditure for an income year for which they are allowed a deduction that is limited under ~~†~~ or more of **sections DG 12 to DG 14**; and
- “(b)** the income year is an income year in which **section DG 16(1)(b)** applies.

15

“How this section applies: first looping rule

20

“(2) The first application of this section is to every group company B in sequence until no other group companies exist to which this subsection applies.

“How this section applies: second looping rule

“(3) The second application of this section is sequentially to—

25

- “(a)** first, ~~†~~ or more of the following persons, none of which is a company referred to in **subsection (2)**:
 - “(i)** a person who is a shareholder in company A;
 - “(ii)** a person who is a shareholder in a company that is a member of the same group of companies as company A and has a voting interest in company A;

30

“(b) secondly, a person who is a shareholder in a company referred to in **paragraph (a)**; and

“(c) so on, until no other persons exist to which this subsection applies.

35

“Quarantined amount

“(4) The amount of the person’s excess expenditure for the income year is calculated using the formula—

$$\text{expenditure} = \text{outstanding profit balance.}$$

“Definition of items in formula

“(5) In the formula,— 5

“(a) **expenditure** is the total of the following amounts:

“(i) the total amount of deductions that the person is allowed for the income year under **sections DG 12 to DG 14**, as applicable and after any necessary apportionment; and 10

“(ii) an amount of the person that was quarantined under this section for an earlier income year and is not yet allocated to an income year.

“(b) **outstanding profit balance**,—

“(i) for company B, is the amount of the outstanding profit balance referred to in **section DG 16(5)**: 15

“(ii) for a shareholder, is the amount that is the person’s share of the outstanding profit balance referred to in **section DG 16(5)**; calculated using the formula in **section DG 13(3)**; treating the outstanding profit balance as if it were the net asset balance. 20

“No deduction for quarantined amount

“(6) The excess expenditure calculated under **subsection (4)** is either quarantined or remains quarantined, as applicable, and is denied as a deduction for the income year. 25

“Recalculation of outstanding profit balance

“(7) For the purposes of **subsections (4) and (5)(b)**, the amount that is the outstanding profit balance must be recalculated on each application, being reduced by an amount equal to the amount of any deduction counted. 30

“Zero result

“(8) For the purposes of the formula in **subsection (4)**, if the amount of the outstanding profit balance for the income year

is greater than the amount of expenditure for the income year,
the result of the formula is treated as zero.

Example

Aircraft Ltd owns an aircraft to which the rules in this subpart
apply. The income derived from the asset in the current year is
less than 2% of the cost of the aircraft. The company has calcu-
lated an outstanding profit balance of \$12,000 after the applica-
tion of **section DG 16(5)**. Aircraft is 100% owned by Parent
Ltd, which has apportioned interest expenditure of \$5,000 calcu-
lated under **section DG 12**. Parent has 2 equal shareholders,
Alisa who has apportioned interest expenditure of \$8,000, and
Hamish who has apportioned interest expenditure of \$1,000, both
calculated under **section DG 14**. Parent must apply **section
DG 18** first, and is not required to quarantine any of its inter-
est expenditure, as the outstanding profit balance is greater than
its apportioned interest expenditure. The outstanding profit bal-
ance is reduced to \$7,000 (\$12,000 - \$5,000) under **section
DG 18(7)**. Alisa's and Hamish's share of the outstanding profit
balance is \$3,500 each (\$7,000 x 50%). Alisa must quarantine
\$4,500 of interest expenditure (\$8,000 - \$3,500); Hamish is not
required to quarantine any interest expenditure, as his interest
expenditure is less than his share of the outstanding profit bal-
ance.

“Defined in this Act: amount, asset, company, deduction, group of companies,
income year, shareholder, voting interest

**“DG 19 Allocation of amounts quarantined under section
DG 18**

“When this section applies

“(1) This section applies for an income year (the **current year**)
when—

“(a) a person has an amount of excess expenditure quaran-
tined under **section DG 18** for an income year before
the current year; and

“(b) an outstanding profit balance referred to in **section
DG 17(4)** is available for use for the current year.

“How this section applies

“(2) This section applies sequentially in the order set out in **sec-
tion DG 18(2) and (3)** until the outstanding profit balance is
reduced to zero.

“Deduction and allocation

- “(3) The amount of previously quarantined expenditure that the person is allowed as a deduction for the current year must not be more than the lesser of—
- “(a) the quarantined amount referred to in **subsection (1)(a)**; 5
- “(b) the amount calculated using the formula—
- outstanding profit balance – expenditure.

“Definition of items in formula

- “(4) In the formula,—
- “(a) **outstanding profit balance**,— 10
- “(i) for company B, is the amount of the outstanding profit balance determined for the company for the current year under **section DG 17(4)**;
- “(ii) for a shareholder, is the amount that is the person’s share of the outstanding profit balance for the current year under **section DG 17(4)**; calculated using the formula in **section DG 13(3)**; treating the outstanding profit balance as if it were the net asset balance; 15
- “(b) **expenditure** is the total amount of deductions that the person is allowed for the current year under **sections DG 12 to DG 14**, as applicable and after any necessary apportionment. 20

“Recalculation of outstanding profit balance

- “(5) For the purposes of **subsections (3) and (4)(a)**, the amount that is the outstanding profit balance must be recalculated on each application, being reduced by an amount equal to the amount of any deduction for quarantined expenditure counted. 25

“Zero result

- “(6) For the purposes of the formula in **subsection (3)**, if the amount of expenditure for the current year is greater than the amount of the outstanding profit balance for the current year, the result of the formula is treated as zero. 30

Example, continued

In the following income year, Aircraft has calculated an outstanding profit balance of \$16,000 after the application of **section DG 17**. **Section DG 19** does not apply to Parent or Hamish because they have no previously quarantined interest expenditure. However, **section DG 19** does apply to Alisa because she has \$4,500 of quarantined interest expenditure from the previous year. Alisa's current year apportioned interest expenditure is \$7,000, calculated under **section DG 14**. Her share of the outstanding profit balance is \$8,000 (\$16,000 x 50%). Alisa is allowed a deduction of \$1,000 of previously quarantined expenditure (\$8,000 - \$7,000). Her remaining quarantined expenditure is \$3,500 (\$4,500 - \$1,000).

⁵
¹⁰
“Defined in this Act: amount; company; deduction; income year; shareholder

“Certain modifications to rules

“DG 20 When income cannot be separately attributed

“Exclusion from rules

¹⁵
“(1) **Sections DG 16 and DG 18** do not apply to the use of an asset for an income year when—

- “(a) the person derives an amount of income for the income year from the use of the asset in a business activity; and
- “(b) because of the nature of the activity, an amount cannot be separately attributed to the use of the asset.

“Re-inclusion

²⁰
“(2) **Subsection (1)** does not apply if—

- “(a) the person also uses the asset in deriving an amount of income that is separately attributable to the use of the asset; and
- “(b) the use of the asset referred to in **paragraph (a)** is at least 80% of the total use of the asset both in the business activity as described in **subsection (1)** and as described in **paragraph (a)**.

Example

Paul uses a helicopter on his farm to check stock for 50 hours over the period of an income year, rents it out for 50 hours, and also uses it privately. While the amount of income is clear, the income Paul derives from using the helicopter in farming oper-

Example—*continued*

ations is not. The use of the helicopter meets the requirements for exclusion under **section DG 20(1)**, and does not meet the requirements for re-inclusion under **section DG 20(2)** as the time spent using the helicopter to earn rental income is only 50% of the total time that the helicopter is used to earn income. Any loss attributable to the helicopter is not quarantined.

“Defined in this Act: amount; asset; business; income; income year

“DG 21 Opting out of treatment under this subpart

“Opt-out threshold

“(1) If the amount of income derived for an income year from the use of an asset is less than \$1,000, the person who has the asset may choose to treat the income as exempt income under **section CW 8B** (Certain amounts derived from use of assets):

“Quarantined expenditure

“(2) If, in relation to the use of an asset in an income year, the person has an amount of quarantined expenditure for the income year, they may choose to treat the amount of income derived that gives rise to the quarantined expenditure as exempt income under **section CW 8B** for the income year.

“Consequences of opting out

“(3) When a person who holds an asset chooses under **subsection (1) or (2)** to treat the income derived from the use of the asset as exempt income, any interest expenditure that must be apportioned under **section DG 9** is treated as expenditure incurred in deriving exempt income.

“Defined in this Act: amount; asset; exempt income; income; income year; interest expenditure

“DG 22 Application of rules to part years

“When this section applies

“(1) This section applies when the total income-earning use, private use, and non-use of an asset of a person relates to only part of an income year.

“Non-use period

“(2) For the purposes of **section DG 3(1)(c)**, the number of days is calculated using the formula—

$$\frac{\text{days}}{365} \times 62.$$

“When assets acquired during year: debt value

“(3) For the purposes of **section DG 11(8)(b)**, if the company acquires the asset during the income year, the debt value is treated as the outstanding amount at the end of the income year. 5

“When assets disposed of during year: debt value

“(4) For the purposes of **section DG 11(8)(b)**, if the company disposes of the asset during the income year, the debt value is treated as the outstanding amount at the start of the income year. 10

“When assets acquired during year: interest expenditure

“(5) For the purposes of **sections DG 11 to DG 14**, when company A acquires an asset during an income year, the amount of interest expenditure that must be apportioned is calculated on a pro rata basis. 15

“Ring-fenced losses in part years

“(6) For the purposes of **section DG 16(1)(b)**, the threshold is calculated using the formula— 20

$$\frac{\text{days}}{365} \times 2\%.$$

“Definition of item in formulas

“(7) In the formula in **subsections (2) and (6)**, **days** is the number of days in the income year on which the person has the asset.

“Defined in this Act: amount, asset, company, debt value, income year, interest expenditure, private use”² 25

“Subpart DG—Expenditure related to use
of certain assets

“*Introductory provisions*

“DG 1 What this subpart does

This subpart sets out the rules for the deductibility and apportionment of expenditure incurred for an income year in relation to an asset when the asset is used partly for income-earning purposes and partly for private purposes, and for a time during the income year, the asset is not in use. 5

“Defined in this Act: asset, deduction, income, income year 10

“DG 2 Application of this subpart

“*Asset by asset*

“(1) The rules in this subpart apply on an asset by asset basis.

“*Relationship with sections DB 5, DB 7, and DB 8*

“(2) The rules in this subpart override sections DB 5, DB 7, and DB 8 (which relate to deductions for financing expenditure) in relation to expenditure that this subpart applies to. 15

“*Relationship with subpart DD*

“(3) Subpart DD (Entertainment expenditure) does not apply to expenditure incurred in relation to the private use of an asset to which this subpart applies. 20

“*Relationship with FBT rules and dividend rules*

“(4) No liability to pay fringe benefit tax arises from the private use of an asset to which this subpart applies. In circumstances where section CX 17 (Benefits provided to employees who are shareholders or investors) applies to a company to which this subpart also applies, the company must choose to treat a non-cash benefit referred to in that section as a dividend. 25

“*Application to groups of and interests in companies*

“(5) For the purposes of this subpart,— 30

“(a) a group of companies is treated as a wholly-owned group of companies:

“(b) a voting interest in a company includes a market value interest when a market value circumstance exists for the company.

“Rules for identifying voting and market value interests

“(6) In this subpart,— 5

“(a) for the purposes of determining the extent to which a company (**company A**) has a voting interest or market value interest in another company (**company B**), the look-through rule in section YC 4 (Look-through rule for corporate shareholders) does not apply to treat company A’s voting interest or market value interest as held by company A’s shareholders or anyone else; and 10

“(b) for the purposes of determining the extent to which company A has a voting interest or market value interest of more than 10% in an associated company, the look-through rule in section YC 4 does not apply to treat a voting interest or a market value interest of company A in the associated company as held by their respective shareholders or anyone else; and 15

“(c) a zero voting interest is not a voting interest, and a zero market value interest is not a market value interest. 20

“Defined in this Act: asset, associated, company, deduction, dividend, fringe benefit tax, group of companies, market value circumstance, market value interest, private use, voting interest, wholly-owned group of companies

“DG 3 Meaning of asset for this subpart 25

“Meaning of asset

“(1) For the purposes of this subpart, an **asset**, for an income year, means an item of property described in **subsection (2)** held by a person described in **subsection (3)** to the extent to which the item— 30

“(a) is used by the person in the income year partly to derive income and partly for private use; and

“(b) is not in use—

“(i) for at least 62 days in the income year; or

“(ii) when the asset is typically used only on working days, for at least 62 working days in the income year. 35

“What items of property?”

- “(2) **Subsection (1)** applies to an asset that, in the complete form in which the person uses it for income-earning purposes,—
- “(a) is 1 of the following:
- “(i) land, including improvements to land: 5
- “(ii) a ship, boat, or craft used in navigation on or under water, whether or not it has a means of propulsion:
- “(iii) an aircraft; and
- “(b) for an item referred to in **paragraph (a)(ii) and (iii)**, 10
has—
- “(i) a cost to the person of \$50,000 or more; or
- “(ii) a market value on the date of acquisition of the asset of \$50,000 or more, if the asset was not 15
acquired at market value; and
- “(c) includes any related items, things, or accessories per-
taining to the asset.

“Which persons?”

- “(3) A person excludes a company other than a close company and, 20
for the purposes of this subpart, a reference in the definition of
close company to a natural person includes a reference to a
trustee.

“Exclusions

- “(4) Despite **subsection (2)**, an asset is excluded from the oper- 25
ation of the rules in this subpart if—
- “(a) the use of the asset meets the following criteria:
- “(i) the private use of the asset is minor; and
- “(ii) the main use of the asset is use in a business that 30
is not a rental or charter business; and
- “(iii) for a company or a trustee of a trust, the use of the 30
asset places an obligation on the company or the
trustee, as applicable, to pay fringe benefit tax or
income tax:
- “(b) the asset is a residential property and its only income- 35
earning use is as a long-term rental property:
- “(c) the asset—
- “(i) is being used in an income year by a person (**per-
son A**); and

“(ii) during the income year, undergoes a change of use; and

“(iii) the only uses made of the asset for the income year are the use by person A and the use by another person from which person A derives income.

5

“*Meaning of market value*

“(5) For the purposes of this subpart, **market value** means the price at which the asset is provided for use at a particular time or for a particular season—

10

“(a) in the open market; and

“(b) freely offered; and

“(c) made on ordinary terms; and

“(d) to a member of the public at arm’s length.

“*Partnerships and look-through companies*

15

“(6) For the purposes of this section, if the asset is held through a partnership or a look-through company, the value of the interests in the asset held by all the partners in the partnership or all the shareholders in the look-through company, as applicable, is aggregated.

20

“*What constitutes use*

“(7) For the purposes of this subpart, the use of an asset is the active use of the asset for its intended purpose.

Example

Graeme owns a yacht that he used with his family for a 4-week holiday. He also rented the yacht at market rates to other people who were not associates on 4 occasions, totalling 3 weeks. The cost of the yacht (including some capital improvements and items such as lifejackets and a dinghy) is \$85,000. The rules in this subpart apply to Graeme.

25

30

“Defined in this Act: amount, asset, business, close company, company, deduction, fringe benefit tax, income, income tax, income year, land, look-through company, market value, partnership, private use, shareholder, tax, trustee, working day

“DG 4 Meaning of private use for this subpart

35

“*What is private use?*

“(1) For the purposes of this subpart, **private use** of an asset—

- “(a) means the use of the asset by a person described in **subsection (2)**, whether or not—
- “(i) the use is exclusive;
- “(ii) an amount of income is derived in relation to its use; 5
- “(b) includes the use of an asset when income derived in relation to the use of the asset is an amount that is less than 80% of the market value amount;
- “(c) excludes the use of the asset referred to in **subsections (3) to (5)**. 10
- “Use by natural persons*
- “(2) The person referred to in **subsection (1)(a)** is a natural person who is—
- “(a) the person who owns, leases, licences, or otherwise has the asset; or 15
- “(b) a person associated with them.
- “Ordinary business use*
- “(3) The use of an asset is not private use if—
- “(a) the asset is used to derive income for a particular period; and 20
- “(b) the person uses the asset during the period solely in the ordinary course of their business.
- “Repairs*
- “(4) The use of an asset is not private use if—
- “(a) the asset is used to derive income for a particular period; and 25
- “(b) damage is caused to the asset during the period; and
- “(c) the damage is not the result of ordinary wear and tear; and
- “(d) the person uses the asset after the end of the period to repair the damage; and 30
- “(e) the use of the asset referred to in **paragraph (d)** is necessary in order for the person to carry out the repairs.
- “Relocation expenses*
- “(5) The use of an asset is not private use if— 35
- “(a) the asset is used to derive income for a particular period in an income year; and

“(b) the person uses the asset before the start of the period, or after the end of the period, or both, to relocate the asset; and

“(c) the use referred to in **paragraph (b)** and the relocation of the asset are necessary for the income-earning purposes; and 5

“(d) the income the person derives for the income year from the use of the asset includes an amount payable for the cost of relocation.

“Exempt income 10

“(6) **Subsections (3) to (5)** do not apply if the person derives an amount of exempt income in relation to the use of the asset. For the treatment of certain amounts of income derived from the use of assets as described in this section, see **section CW 8B** (Certain amounts derived from the use of assets). 15

Example

Mary owns a launch. During the course of an income year, she takes her family out on the launch, she lets her brother use the launch (paying the market rate of \$200 per day) and she lets her friend use the launch (paying fuel costs only at the rate of \$50 per day). All these uses are instances of private use. When Mary rents out the launch to non-associates at market rates, takes the launch to another port for rental to non-associates at \$250 per day and then back again to the home port, or takes the launch to a boatyard for repair after damage was caused by a non-associate during a rental period, none of these instances is private use. 20 25

“Defined in this Act: amount, asset, associated person, business, exempt income, income, lease, market value, pay, private use

“**DG 5 Meaning and treatment of interest expenditure for this subpart** 30

“Interest expenditure

“(1) In this subpart, **interest expenditure**, for a person to whom this subpart applies, means expenditure on interest, and includes an amount of interest on the sum of the outstanding balances of financial arrangements entered into by the person, if the financial arrangement— 35

“(a) provides funds to the person; and

“(b) gives rise to an amount for which the person would have a deduction.

“Apportionment

“(2) For the purposes of this subpart,—

“(a) if the person is not a company, an amount of interest expenditure incurred in relation to an asset is included in the item **expenditure** in **section DG 9(3)(a)**; 5

“(b) if the person is a company other than a qualifying company, an amount of interest expenditure incurred in relation to an asset is apportioned under **section DG 11**; 10

“(c) if the person is a qualifying company, they are treated for the purposes of this subpart as a person that is not a company.

“Exchange rate fluctuations

“(3) Interest expenditure does not include a deduction for an amount that arises only from movement in currency exchange rates. 15

“Defined in this Act: amount, asset, company, deduction, financial arrangement, interest, interest expenditure, look-through company, partnership, qualifying company 20

“DG 6 Associated persons: company rule modified

Despite section YB 3(1), for the purposes of this subpart, a company and a person other than a company are associated persons if—

“(a) the person has a voting interest in the company of 5% or more; or 25

“(b) the person’s share in the company gives them a right to use the asset.

“Defined in this Act: asset, associated person, company, share, voting interest

“When assets held simply 30

“DG 7 Expenditure related to income-earning use

“Expenditure on certain business and regulatory requirements

“(1) A person is allowed a deduction for expenditure or loss, including an amount of depreciation loss, to the extent to which the amount incurred— 35

“(a) relates solely to the use of an asset for deriving income of the person, other than exempt income; and

“(b) is expenditure—

“(i) from which the person would not reasonably expect to receive a personal benefit, or for a company, an associate of the person: 5

“(ii) that the person must reasonably incur to meet a regulatory requirement so that they may use the asset for deriving income and that would not have been incurred but for the requirement. 10

“Expenditure that must be apportioned

“(2) Despite **subsection (1)** and for the avoidance of doubt, all expenditure on repairs and maintenance incurred in relation to an asset must be treated as expenditure that is limited under **section DG 8**. However, this subsection does not apply to the cost of repairing damage described in **section DG 4(4)**. 15

Example

John operates a charter boat which he also uses privately. He incurs expenses including costs in meeting Maritime New Zealand survey requirements, advertising costs, and general maintenance costs. The advertising costs are fully deductible because they deliver no personal benefit. The survey costs are fully deductible if they are incurred only for charter purposes. The maintenance costs are not deductible under this provision because they deliver a personal benefit as well as an income-earning benefit. A portion of these maintenance costs may be allowed as a deduction under **section DG 8**. 20 25

“Defined in this Act: amount, asset, associated person, company, deduction, depreciation loss, exempt income, income

“DG 8 Expenditure limitation rule 30

“Limited deduction

“(1) A person is allowed a deduction for expenditure or loss, including an amount of depreciation loss, that they incur in relation to the income-earning use of an asset to the extent of the amount calculated using the formula in **section DG 9(2)**. 35

“Depreciation recovery and loss on disposal

“(2) In the treatment of assets generally,—

“(a) if some or all of the expenditure on an asset is apportioned for tax purposes on the basis of space, floor area, or on another similar basis, that method of apportionment overrides the rules in this subpart to the extent of the amount of the deduction:

5

“(b) depreciation recovery income on disposal is dealt with in section EE 49 (Amount of depreciation recovery income when item partly used for business):

“(c) depreciation loss on disposal is dealt with in sections EE 44 to EE 48, and EE 50(6) and (7) (which relate to amounts of depreciation loss).

10

“Relationship with other sections

“(3) This section—

“(a) supplements the general permission and overrides the capital limitation and the private limitation, but the other limitations still apply:

15

“(b) overrides section EE 50(2) (Amount of depreciation loss when item partly used to produce income).

“Defined in this Act: amount, asset, capital limitation, deduction, depreciation loss, depreciation recovery income, general permission, private limitation

20

“DG 9 Apportionment formula

“What this section does

“(1) This section provides the formula for use in **sections DG 8 and DG 11 to DG 13** to calculate the way in which an amount of expenditure or loss that a person incurs in relation to an asset is apportioned between its income-earning use and its private or other use.

25

“Formula

“(2) The apportionment formula is—

$$\text{expenditure} \quad \times \quad \frac{\text{income-earning days}}{(\text{income-earning days} + \text{counted days})}$$

“Definition of items in formula

30

“(3) In the formula,—

“(a) **expenditure** is the total expenditure or loss that is incurred by the person for an income year in relation to

- the asset, and that would be deductible in the absence of this subpart, other than expenditure that is—
- “(i) related solely to the income-earning use of the asset as described in **section DG 7**; or
- “(ii) related solely to the private use of the asset: 5
- “(b) **income-earning days** is the total number of days in the income year for which the person derives income from the use of the asset, other than exempt income under **section CW 8B(3)** (Certain amounts derived from the use of assets), including any days on which— 10
- “(i) the use made of the asset is use described in **section DG 4(3) to (5)**;
- “(ii) the asset has become unavailable for use because another person who had earlier reserved the asset for their own use, subsequently did not take advantage of that reservation: 15
- “(iii) a fringe benefit tax liability arises:
- “(c) **counted days** is the total number of days in the income year on which the asset is in use, and the day is not an income-earning day as described in **paragraph (b)**. 20
- “Other units of measurement*
- “(4) A unit of measurement of time other than days, whether relating to hours, or nights, or anything else, is to be used in the formula and in **subsection (3)(b) and (c)**, if it achieves a more appropriate apportionment. For this purpose, the same unit must be used in relation to both items in **subsection (3)(b) and (c)**. 25
-
- Example**
- Jim rents out his aeroplane at market value for 100 hours in an income year, and uses it for his personal enjoyment for 50 hours. Jim incurs expenditure of \$10,000 for general repairs and maintenance of the plane. He may deduct two-thirds of the expenditure (section DG 9(2)). The formula is $\$10,000 \times (100/(100 + 50)) = \$6,666.67$. 30
-
- “Defined in this Act: amount, asset, deduction, exempt income, fringe benefit tax, income, income year, market value, private use 35

“When assets held in corporate structures

“DG 10 Interest expenditure rules

“Groups of companies

“(1) Sections DG 11 to DG 14 provide for the apportionment of interest expenditure incurred by a company that has an asset to which this subpart applies, and by other companies that are in the same group of companies as the company, and by shareholders. Companies must provide information disclosure statements under section 30D of the Tax Administration Act 1994 to enable the calculations to be made. 5 10

“Exclusions: group companies

“(2) A company (company A) that is treated as part of a wholly-owned group under this subpart, but is not part of a wholly-owned group for the other purposes of this Act, is excluded from the interest expenditure rules in sections DG 11 to DG 14 for an income year if— 15

“(a) no private use of an asset of a company in the group has been made in the income year by a shareholder of company A;

“(b) no tax losses have been made available under subpart IC (Grouping tax losses) between company A and other companies in the group. 20

“Exclusion: corporate shareholders

“(3) Section DG 13 does not apply to a corporate shareholder if—

“(a) the shareholder has a direct or indirect interest of less than 50% in the company that has the asset; and 25

“(b) the shareholder has not enjoyed any private use of the asset.

“Exclusion: non-corporate shareholders

“(4) Section DG 14 does not apply to a shareholder if— 30

“(a) the shareholder has a direct or indirect interest of less than 50% in the company that has the asset; and

“(b) the shareholder has not enjoyed any private use of the asset.

“Treatment of qualifying companies 35

“(5) The interest expenditure rules apply to a qualifying company in the following way:

“(a) the company is treated as if **section DG 11(3)** applied to it in order to calculate the amount of the company’s net asset balance; and

“(b) **sections DG 12 to DG 14** then apply to determine the amount of the deduction to which the company, another company, or a shareholder is entitled. 5

“*Associated persons*

“(6) For the purposes of **subsections (2), (3), and (4)**, a reference to a shareholder includes a person associated with the shareholder, unless the associated person is also a shareholder. 10

“Defined in this Act: amount, asset, associated person, company, deduction, group of companies, income year, interest expenditure, net asset balance, private use, qualifying company, shareholder, tax loss, wholly-owned group

“**DG 11 Interest expenditure: close companies**

“*What this section does* 15

“(1) This section quantifies the amount of a deduction that a close company is allowed for an income year when—

“(a) the company has an asset to which this subpart applies; and

“(b) the company incurs interest expenditure for the income year. 20

“*Determining values and deductions*

“(2) The company must first determine the amount of its debt value and its asset value for the income year, and then apply either **subsection (3)** or **subsections (4) to (6)**. 25

“*Debt value less than asset value*

“(3) If the debt value for the income year is equal to or less than the asset value for the income year, the company is allowed a deduction of a portion of interest expenditure incurred for the income year— 30

“(a) of an amount calculated using the formula in **section DG 9(2)**; and

“(b) treating the company’s total interest expenditure for the income year as if it were the item **expenditure** in the formula. 35

“Debt value more than asset value

“(4) If the debt value for the income year is more than the asset value for the income year, the company must calculate a reduced amount of interest expenditure for the income year using the formula—

5

$$\text{interest expenditure} \quad \times \quad \frac{\text{company's asset value}}{\text{company's debt value.}}$$

“Definition of items in formula

“(5) In the formula,—

“(a) **interest expenditure** is the total amount of interest expenditure incurred by the company for the income year:

“(b) **company's asset value** is the amount of the company's asset value for the income year:

10

“(c) **company's debt value** is the amount of the company's debt value for the income year.

“Apportionment of reduced amounts

“(6) The company is allowed a deduction for the income year of a portion of the reduced amount described in **subsection (4)**,—

15

“(a) of an amount calculated using the formula in **section DG 9(2)**; and

“(b) treating the reduced amount as if it were the item **expenditure** in the formula.

20

“Net asset balance

“(7) When **subsection (3)** applies for an income year, the amount that remains outstanding after subtracting the debt value for the income year from the asset value for the income year (the **net asset balance**), must be used under **sections DG 12 to DG 14**, as applicable.

25

“Meaning of asset value

“(8) For the purposes of this subpart, **asset value** means the value of the asset at the end of an income year, using—

“(a) for land, including an improvement to land, the amount given by the later of either its most recent capital value or annual value (as set by the relevant local authority), or its cost on acquisition (or market value, if the transaction involves an associated person):

30

“(b) for other property, its adjusted tax value.

“*Meaning of debt value*

“(9) For the purposes of this subpart, **debt value**—

“(a) means the average outstanding amount that gives rise to the interest payable by the company, measured by reference to the amounts outstanding at the start of and at the end of an income year; and 5

“(b) for a person who has, in the income year, more than 1 asset to which this subpart applies, is reduced in **subsection (5)(c), sections DG 12(6)(c) and DG 13(8)(c),** by an amount previously taken into account under this subpart for the income year. 10

Example

Holiday Home Ltd holds a holiday home with a rateable value of \$200,000. The company has debt of \$40,000, with associated interest expenditure of \$4,000. Since the debt value is less than the asset value, all the interest expenditure must be apportioned (section DG 11(3)). 15

Boat Ltd has a charter boat whose cost is \$60,000. The company has debt of \$100,000, with associated interest expenditure of \$10,000. Since the debt value is more than the asset value, the company must apportion interest expenditure of \$6,000 (section DG 11(4)-(6)). The formula is $\$10,000 \times (\$60,000/\$100,000) = \$6,000$. 20

“Defined in this Act: adjusted tax value, amount, asset, asset value, associated person, close company, cost, debt value, deduction, income, income year, interest, interest expenditure, land, market value, net asset balance, pay 25

“DG 12 Interest expenditure: group companies

“*When this section applies*

“(1) This section applies for an income year when— 30

“(a) a close company or a qualifying company (**company A**) has a net asset balance; and

“(b) company A is part of the same group of companies as another company (**company B**); and

“(c) company B has interest expenditure for which it is allowed a deduction. 35

“How this section applies: looping rule

“(2) This section applies sequentially to every group company B until—

“(a) the net asset balance for the income year is reduced to zero, or is treated as reduced to zero; or 5

“(b) no other group companies exist to which this section applies.

“Debt value less than net asset balance

“(3) If company B’s debt value for the income year is equal to or less than the net asset balance for the income year, company B is allowed a deduction of a portion of interest expenditure incurred for the income year,— 10

“(a) of an amount calculated by company A using the formula in **section DG 9(2)**; and

“(b) treating company B’s total interest expenditure for the income year as if it were the item **expenditure** in the formula. 15

“Recalculation of net asset balance

“(4) In the application of **subsection (3)**, the amount of the net asset balance must be recalculated on each application, being reduced by an amount equal to each counted group company’s debt value. 20

“Debt value more than net asset balance

“(5) If company B’s debt value for the income year is more than the net asset balance for the income year, company B must calculate a reduced amount of interest expenditure for the income year using the formula— 25

$$\frac{\text{interest expenditure}}{\text{company B's debt value}} \times \frac{\text{net asset balance}}{\text{company B's debt value}}$$

“Definition of items in formula

“(6) In the formula,—

“(a) **interest expenditure** is the total amount of interest expenditure incurred by company B for the income year: 30

“(b) **net asset balance** is the amount of the net asset balance for the income year:

“(c) **company B’s debt value** is the amount of company B’s debt value for the income year.

“*Apportionment of reduced amounts*

“(7) Company B is allowed a deduction for the income year of a portion of the reduced amount described in **subsection (5)**,— 5

“(a) of an amount calculated by company A using the formula in **section DG 9(2)**; and

“(b) treating the reduced amount as if it were the item **expenditure** in the formula.

“*Net asset balance zero* 10

“(8) Once a calculation is made under **subsection (5)**, company B’s net asset balance is treated as zero.

“*Net asset balance*

“(9) If a net asset balance remains outstanding after the application of this section for an income year, the amount must be used under **sections DG 13 and DG 14**, as applicable. 15

Example

Holiday Home Ltd has an asset balance of \$160,000 (\$200,000 less \$40,000) and is wholly owned by Parent Ltd. Parent has debt of \$30,000, with associated interest expenditure of \$3,000. Since Parent’s debt value is less than the asset balance, all of Parent’s interest expenditure must be apportioned (section DG 12(3)). 20

“Defined in this Act: amount, asset value, close company, company, debt value, deduction, group of companies, income year, interest expenditure, net asset balance, qualifying company 25

“DG 13 Interest expenditure: corporate shareholders

“*When this section applies*

“(1) This section applies when—

“(a) a net asset balance remains outstanding for an income year after the application of— 30

“(i) first, **section DG 12**, if applicable; or

“(ii) secondly, **section DG 11**; and

“(b) 1 or more of the following companies, none of which is part of a group of companies that includes company A, exists: 35

“(i) a company that is a shareholder in company A:

“(ii) a company that is a shareholder in a company that is part of the same group of companies as company A and has a voting interest in company A:

“(iii) a company that has a voting interest in a company referred to in **subparagraph (i) or (ii)**. 5

“How this section applies: looping rule

“(2) This section applies sequentially as follows:

“(a) first, to the companies referred to in **subsection (1)(b)(i) and (ii)**; and

“(b) secondly, to the extent to which the debt value of the company for the income year remains less than the company’s share of the net asset balance, to the companies that are shareholders in a company referred to in **paragraph (a)**; and 10

“(c) so on, until either— 15

“(i) the company’s share of the net asset balance for the income year is reduced to zero or is treated as reduced to zero; or

“(ii) no other corporate shareholders exist to which this section applies. 20

“Limitation by share in asset balance

“(3) The deduction that the company is allowed for interest expenditure incurred for the income year is limited by their share of the net asset balance. The share of the asset balance is calculated using the formula— 25

net asset balance × company’s interest.

“Definition of items in formula

“(4) In the formula in **subsection (2)**,—

“(a) **net asset balance** is the amount of the net asset balance after the application of **section DG 11 or DG 12**, as applicable, and as recalculated under **subsection (6)**; 30

“(b) **company’s interest** is the relevant voting interest in company A, expressed as a percentage.

“Debt value less than asset balance

“(5) If the debt value for the company for the income year is equal to or less than its share of the net asset balance for the income 35

year, the company is allowed a deduction of a portion of interest expenditure incurred for the income year,—

“(a) of an amount calculated by company A using the formula in **section DG 9(2)**; and

“(b) treating the total interest expenditure for the income year as if it were the item **expenditure** in the formula. 5

“Recalculation of asset balance

“(6) In the application of **subsection (5)**, the amount that is the company’s share of the net asset balance must be recalculated on each application, being reduced by an amount equal to each counted company’s debt value. 10

“Debt value more than asset balance

“(7) If the debt value for the company for the income year is more than its share of the net asset balance, the company must calculate a reduced amount of interest expenditure incurred for the income year using the formula— 15

$$\frac{\text{interest expenditure}}{\text{interest expenditure}} \times \frac{\text{company's share of net asset balance}}{\text{company's debt value.}}$$

“Definition of items in formula

“(8) In the formula in **subsection (7)**,—

“(a) **interest expenditure** is the total amount of interest expenditure incurred by the company for the income year: 20

“(b) **company’s share of net asset balance** is the amount calculated for the company under **subsection (3)**;

“(c) **company’s debt value** is the amount of the debt value of the company for the income year.

“Apportionment of reduced amounts 25

“(9) The company is allowed a deduction for the income year of a portion of the reduced amount described in **subsection (7)**,—

“(a) of an amount calculated by company A using the formula in **section DG 9(2)**; and

“(b) treating the reduced amount as if it were the item **expenditure** in the formula. 30

“Net asset balance zero

“(10) Once a calculation is made under **subsection (7)**, the amount that is the company’s share of the net asset balance is treated as zero.

“Net asset balance

5

“(11) If a net asset balance remains outstanding after the application of this section for an income year, the amount must be used under **section DG 14**.

Example

Parent Ltd has two equal corporate shareholders, company Y, which has debt of \$20,000 with associated interest expenditure of \$2,000, and company Z, which has debt of \$70,000 with associated interest expenditure of \$7,000. Both companies, share of the net asset balance is \$65,000 ($\$130,000 \times 50\%$). Since company Y’s debt value is less than its share of the net asset balance, all its interest expenditure must be apportioned (section DG 13(5)). Company Z’s debt value is greater than its share of the net asset balance, so it must apportion interest expenditure of \$6,500 (section DG 13(7)-(9)). The formula is $\$7,000 \times (\$65,000/\$70,000) = \$6,500$.

10

15

20

“Defined in this Act: amount, company, debt value, deduction, group of companies, income year, interest expenditure, net asset balance, shareholder, voting interest

“DG 14 Interest expenditure: non-corporate shareholders

“When this section applies

25

“(1) This section applies for an income year when—

“(a) a net asset balance remains outstanding for an income year after the application of—

“(i) first, **section DG 13**, if applicable;

“(ii) secondly, **section DG 12**, if applicable;

30

“(iii) thirdly, **section DG 11**, if neither applies; and

“(b) a person exists who—

“(i) is not a company, other than a company acting as a trustee; and

“(ii) has a voting interest in company A; and

35

“(iii) has interest expenditure for which they are allowed a deduction.

“Amount to be apportioned

“(2) For a natural person, the amount of interest expenditure that must be apportioned is only the amount of interest that the person incurs on money borrowed to acquire shares in company A or in a company referred to in **section DG 13(1)(b)**.

5

“Method of apportionment

“(3) The apportionment is made using the rules set out in **section DG 13(2) to (10)**, treating the person as if they were the company.

Example

10

Company Y has two shareholders: Thomas, who has borrowed \$200,000 to acquire a 50% interest in the company, and Brent, who has borrowed \$10,000 to buy his 50% interest. Each has a share of the remaining net asset balance of \$22,500. The formula is $(\$65,000 - \$20,000) \times 50\% = \$22,500$. Since Thomas's debt value is greater than his share of the net asset balance, Thomas must apportion 11.25% of his total interest expenditure (sections DG 14 and DG 13(7)-(9)). The formula is $22,500/200,000$. Since Brent's debt value is less than his share of the net asset balance, all Brent's interest expenditure must be apportioned (sections DG 14 and DG 13(5)).

15

20

“Defined in this Act: amount, company, deduction, income year, interest, interest expenditure, net asset balance, share, trustee, voting interest

“Quarantined expenditure

“DG 15 Quarantined expenditure rules

25

Sections DG 16 and DG 18 provide the rules that limit the amount of a person's deduction under **sections DG 7, DG 8, and DG 11 to DG 14** for an income year when the income derived from the use of the asset does not reach a specified threshold. The excess expenditure is quarantined and denied as a deduction for the income year. **Sections DG 17 and DG 19** provide for the allocation of the quarantined amount to a later income year when the income derived is sufficient to offset the expenditure. Companies must provide information disclosure statements under **section 30D** of the Tax Administration Act 1994 to enable the calculations to be made.

30

35

“Defined in this Act: amount, asset, company, deduction, income, income year

“DG 16 Quarantined expenditure when asset activity negative

“When this section applies

“(1) This section applies when—

“(a) a person incurs expenditure for which they are allowed a deduction that is limited under **section DG 7, DG 8,** 5
or **DG 11, as applicable, for an income year; and**

“(b) the amount of income derived for the income year from the use of an asset, other than an amount of exempt income, is less than 2% of—

“(i) for land, including an improvement to land, the amount given by the later of either its most recent capital value or annual value (as set by the relevant local authority) or its cost on acquisition (or market value, if the transaction involves an associated person): 10

“(ii) for other property to which this subpart applies, its adjusted tax value. 15

“Quarantined amount

“(2) The amount of the person’s excess expenditure for the income year is calculated using the formula— 20

expenditure – asset income.

“Definition of items in formula

“(3) In the formula,—

“(a) **expenditure is the total of the following amounts:**

“(i) the total amount of deductions that the person is allowed for the income year under **sections DG 7, DG 8, and DG 11, as applicable and after any necessary apportionment; and** 25

“(ii) an amount of the person that was quarantined under this section for an earlier income year and is not yet allocated to an income year: 30

“(b) **asset income is the total amount of income, other than an amount of exempt income, derived for the income year from the use of the asset.**

“No deduction for quarantined amount

“(4) The excess expenditure calculated under **subsection (2) is quarantined and denied as a deduction for the income year.** 35

“Outstanding profit balance

“(5) If the amount of expenditure for the income year is less than the amount of income for the income year, the excess income is the **outstanding profit balance** for the income year to be used under **section DG 18**. If the amount of expenditure for the income year is equal to or more than the amount of income for the income year, the outstanding profit balance is treated as zero. 5

“Zero result

“(6) For the purposes of the formula in **subsection (2)**, if the amount of income for the income year is greater than the amount of expenditure for the income year, the result of the formula is treated as zero. 10

Example

David has a city apartment with a rateable value of \$300,000. He rents out the apartment and also uses it privately. He receives market rate rental of \$4,000 from non-associates, and \$6,000 from associates. David’s total allowable expenditure, under sections DG 7, DG 8, and DG 11, is \$15,000. Since David’s income from non-associates is less than 2% of the apartment’s rateable value, the excess expenditure of \$5,000 is denied as a deduction. The amount denied may be allocated to a later income year under section DG 17. 15 20

“Defined in this Act: adjusted tax value, amount, asset, associated person, cost, deduction, exempt income, income, income year, land, market value 25

“DG 17 Allocation of amounts quarantined under section DG 16

“When this section applies

“(1) This section applies for an income year (the **current year**) when— 30

“(a) a person has an amount of excess expenditure quarantined under **section DG 16** in relation to an asset for an income year before the current year; and

“(b) the person’s income for the current year from the use of the asset is more than the amount of their deductions under **sections DG 7, DG 8, and DG 11**, as applicable. 35

“Deduction and allocation

“(2) The amount of previously quarantined expenditure that the person is allowed as a deduction for the current year must not be more than the lesser of—

“(a) the amount referred to in **subsection (1)(a)**; 5

“(b) the amount calculated using the formula—

asset income – expenditure.

“Definition of items in formula

“(3) In the formula,—

“(a) **asset income** is the total amount of income derived for the current year from the use of the asset; 10

“(b) **expenditure** is the total amount of deductions that the person is allowed in relation to the asset for the current year under **sections DG 7, DG 8, and DG 11**, as applicable and after any necessary apportionment.

“Outstanding profit balance 15

“(4) If the lesser amount in **subsection (2)** is the quarantined amount referred to in **subsection (2)(a)**, an outstanding profit balance arises of an amount that is the difference between the amount of income for the current year and the amount of expenditure for the current year, including the quarantined amount allocated to the current year. The outstanding profit balance is available for use under **section DG 19**. 20

“Zero result

“(5) For the purposes of the formula in **subsection (2)**, if the amount of expenditure for the current year is greater than the amount of income for the current year, the result of the formula is treated as zero. 25

“Modification for certain assets

“(6) For the purposes of **subsection (1)(a)**, a quarantined amount that is related to an asset may be used in relation to another asset of the person if— 30

“(a) the first asset is damaged, destroyed, or lost, and is no longer held by the person; and

“(b) a second asset is acquired to replace the first asset; and

“(c) the two assets are identical or substantially the same. 35

Example, continued

In the following income year, David derives \$10,000 from renting his city apartment at market rates to a non-associate. David's total allowable expenditure, under sections DG 7, DG 8, and DG 11, is \$8,000. He also has expenditure of \$5,000 quarantined from the previous income year. David is able to deduct \$2,000 of that quarantined expenditure. The remaining \$3,000 continues to be quarantined and may be allowed as a deduction for a later income year.

5

“Defined in this Act: amount, asset, deduction, income, income year

10

“DG 18 Quarantined expenditure: group companies and shareholders

“When this section applies

“(1) This section applies when—

“(a) a person incurs expenditure for an income year for which they are allowed a deduction that is limited under 1 or more of **sections DG 12 to DG 14**; and

15

“(b) the income year is an income year in which **section DG 16(1)(b)** applies.

“How this section applies: first looping rule

20

“(2) The first application of this section is to every group company B in sequence until no other group companies exist to which this subsection applies.

“How this section applies: second looping rule

“(3) The second application of this section is sequentially to—

25

“(a) first, 1 or more of the following persons, none of which is a company referred to in **subsection (2)**:

“(i) a person who is a shareholder in company A:

“(ii) a person who is a shareholder in a company that is part of the same group of companies as company A and has a voting interest in company A:

30

“(b) secondly, a person who is a shareholder in a company referred to in **paragraph (a)**; and

“(c) so on, until no other persons exist to which this subsection applies.

35

“Quarantined amount

“(4) The amount of the person’s excess expenditure for the income year is calculated using the formula—

expenditure – outstanding profit balance.

“Definition of items in formula

“(5) In the formula,— 5

“(a) **expenditure** is the total of the following amounts:

“(i) the total amount of deductions that the person is allowed for the income year under **sections DG 12 to DG 14**, as applicable and after any necessary apportionment; and 10

“(ii) an amount of the person that was quarantined under this section for an earlier income year and is not yet allocated to an income year:

“(b) **outstanding profit balance,—**

“(i) for company B, is the amount of the outstanding profit balance referred to in **section DG 16(5)**; 15

“(ii) for a shareholder, is the amount that is the person’s share of the outstanding profit balance referred to in **section DG 16(5)**, calculated using the formula in **section DG 13(3)**, treating the outstanding profit balance as if it were the net asset balance. 20

“No deduction for quarantined amount

“(6) The excess expenditure calculated under **subsection (4)** is either quarantined or remains quarantined, as applicable, and is denied as a deduction for the income year. 25

“Recalculation of outstanding profit balance

“(7) For the purposes of **subsections (4) and (5)(b)**, the amount that is the outstanding profit balance must be recalculated on each application, being reduced by an amount equal to the amount of any deduction counted. 30

“Zero result

“(8) For the purposes of the formula in **subsection (4)**, if the amount of the outstanding profit balance for the income year

is greater than the amount of expenditure for the income year,
the result of the formula is treated as zero.

Example

Aircraft Ltd owns an aircraft to which the rules in this subpart
apply; the income derived from the asset in the current year is less 5
than 2% of the cost of the aircraft. The company has calculated
an outstanding profit balance of \$12,000 after the application of
section DG 16. Aircraft is 100% owned by Parent Ltd, which has
apportioned interest expenditure of \$5,000 calculated under sec- 10
tion DG 12. Parent has 2 equal shareholders, Alisa who has ap-
portioned interest expenditure of \$8,000, and Hamish who has
apportioned interest expenditure of \$1,000, both calculated under
section DG 14. Parent must apply section DG 18 first, and is not
required to quarantine any of its interest expenditure; the out- 15
standing profit balance is reduced to \$7,000 (\$12,000 - \$5,000).
Alisa's and Hamish's share of the outstanding profit balance is
\$3,500 each (\$7,500 x 50%). Alisa must quarantine \$4,500 of
interest expenditure (\$8,000 - \$3,500); Hamish is not required to
quarantine any interest expenditure.

“Defined in this Act: amount, asset, company, deduction, group of companies,
income year, net asset balance, shareholder, voting interest 20

**“DG 19 Allocation of amounts quarantined under section
DG 18**

“When this section applies

“(1) This section applies for an income year (the **current year**) 25
when—

“(a) a person has an amount of excess expenditure quaran-
tined under **section DG 18** for an income year before
the current year; and

“(b) an outstanding profit balance referred to in **section** 30
DG 17(4) is available for use for the current year.

“How this section applies

“(2) This section applies sequentially in the order set out in **sec-
tion DG 17(2) and (3)** until the outstanding profit balance is
reduced to zero. 35

“Deduction and allocation

“(3) The amount of previously quarantined expenditure that the person is allowed as a deduction for the current year must not be more than the lesser of—

“(a) the quarantined amount referred to in **subsection (1)(a)**: 5

“(b) the amount calculated using the formula—

outstanding profit balance – expenditure.

“Definition of items in formula

“(4) In the formula,—

“(a) **outstanding profit balance**,— 10

“(i) for company B, is the amount of the outstanding profit balance determined for the company for the current year under **section DG 18(5)**, if applicable, or otherwise under **section DG 17(4)**;

“(ii) for a shareholder, is the amount that is the person’s share of the outstanding profit balance for the current year under **section DG 18(5)**, if applicable, or otherwise under **section DG 17(4)**, calculated using the formula in **section DG 13(3)**, treating the outstanding profit balance as if it were the net asset balance: 15 20

“(b) **expenditure** is the total amount of deductions that the person is allowed for the current year under **sections DG 12 to DG 14**, as applicable and after any necessary apportionment. 25

“Recalculation of outstanding profit balance

“(5) For the purposes of **subsections (3) and (4)(a)**, the amount that is the outstanding profit balance must be recalculated on each application, being reduced by an amount equal to the amount of any deduction for quarantined expenditure counted. 30

“Zero result

“(6) For the purposes of the formula in **subsection (3)**, if the amount of expenditure for the current year is greater than the amount of the outstanding profit balance for the current year, the result of the formula is treated as zero. 35

Example, continued

In the following income year, Aircraft has calculated an outstanding profit balance of \$16,000 after the application of section DG 18. Section DG 19 does not apply to Parent or Alisa because they have no previously quarantined interest expenditure. However, the section does apply to Hamish because he has \$4,500 of quarantined interest expenditure from the previous year. Hamish's current year apportioned interest expenditure is \$7,000, calculated under section DG 14, and his share of the outstanding profit balance is \$8,000 (\$16,000 x 50%). Hamish is allowed a deduction for \$1,000 of previously quarantined expenditure (\$8,000 - \$7,000). His remaining quarantined expenditure is \$3,500 (\$4,500 - \$1,000).

“Defined in this Act: amount, company, deduction, income year, net asset balance, shareholder

“Certain modifications to rules

“DG 20 When income cannot be separately attributed

“Exclusion from rules

“(1) Sections DG 16 and DG 18 do not apply to the use of an asset for an income year when—

“(a) the person derives an amount of income for the income year from the use of the asset in a business activity; and

“(b) because of the nature of the activity, an amount cannot be separately attributed to the use of the asset.

“Re-inclusion

“(2) Subsection (1) does not apply if—

“(a) the person also uses the asset in deriving an amount of income that is separately attributable to the use of the asset; and

“(b) the use of the asset referred to in paragraph (a) is at least 80% of the total use of the asset both in the business activity referred to in subsection (1) and as described in paragraph (a).

Example

Paul uses a helicopter on his farm to check stock for 50 hours in an income year, rents it out for 50 hours, and also uses it privately. While the income from the rental is clear, the income Paul derives in relation to the use of the helicopter in farming operations is not.

Example—*continued*

The use of the helicopter falls outside the rules under the exclusion in section DG 20(1), and does not meet the requirements for re-inclusion under section DG 20(2) as the use of the helicopter to earn rental income is only 50% of the total income-earning use of the helicopter. Any loss attributable to the helicopter is not quarantined. 5

“Defined in this Act: amount, asset, business, income, income year

“DG 21 Opting out of treatment under this subpart

“Opt-out threshold

“(1) If the amount of income derived for an income year from the use of an asset is less than \$4,000, the person who has the asset may choose to treat the income as exempt income under **section CW 8B(2)** (Certain amounts derived from use of assets). The threshold amount does not include an amount of income exempt under **section CW 8B(3)**. 10
15

“Quarantined expenditure

“(2) If, in relation to the use of an asset in an income year, the person has an amount of quarantined expenditure for the income year, they may choose to treat the amount of income derived that gives rise to the quarantined expenditure as exempt income under **section CW 8B** for the income year. 20

“Consequences of opting out

“(3) When a person who has an asset chooses under **subsection (1) or (2)** to treat the income derived from the use of the asset as exempt income, any interest expenditure that must be apportioned under **section DG 9** is treated as expenditure incurred in deriving exempt income. 25

“No application to companies

“(4) This section does not apply when the person who has the asset is a company. 30

Example

Mike rents his bach out through the internet to a non-associate. The gross amount he receives for an income year is \$3,000. Mike can opt out of the rules in this subpart, which would mean that he

Example—*continued*

would not be liable to tax on the amount, but would also not be entitled to claim any deductions in relation to the bach.

“Defined in this Act: amount, asset, exempt income, income, income year, interest expenditure

“DG 22 Application of rules to part years 5

“When this section applies

“(1) This section applies when the total income-earning use, private use, and non-use of an asset of a person relates to only part of an income year.

“Non-use period

“(2) For the purposes of **section DG 3(1)(b)**, the number of days is calculated using the formula—

$$\frac{\text{days}}{365} \times 62.$$

“When assets acquired during year: debt value

“(3) For the purposes of **section DG 11(9)**, if the company acquires the asset during the income year, the debt value is treated as the outstanding amount at the end of the income year. 15

“When assets disposed of during year: debt value

“(4) For the purposes of **section DG 11(9)**, if the company disposes of the asset during the income year, the debt value is treated as the outstanding amount at the start of the income year. 20

“When assets both acquired and disposed of during year

“(5) For the purposes of **section DG 11(9)**, if the company both acquires and disposes of the asset during the income year, the debt value is treated as the average of the outstanding amounts on the date on which the asset was acquired and the date of its disposal. 25

“When assets acquired during year: interest expenditure

“(6) For the purposes of **sections DG 11 to DG 14**, when company A acquires or disposes of an asset during an income year, the amount of interest expenditure that must be apportioned is calculated on a pro rata basis.

5

“Ring-fenced losses in part years

“(7) For the purposes of **section DG 16(1)(b)**, the threshold is calculated using the formula—

$$\frac{\text{days}}{365} \times \underline{2\%}$$

“Definition of item in formulas

“(8) In the formula in **subsections (2) and (6)**, **days** is the number of days in the income year on which the person has the asset, and for the purposes of the calculation, **section DG 9(4)** similarly applies.

10

“Defined in this Act: amount, asset, company, debt value, income year, interest expenditure, private use”.

15

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

(2) **Subsection (1)** applies for the 2013–14 and later income years for an item of property referred to in **section DG 3(2)(a)(i)**. **Subsection (1)** applies for the 2014–15 and later income years for an item of property referred to in **section DG 3(2)(a)(ii) and (iii)**.

20

20 Section DO 1 amended (Enhancements to land, except trees)

In section DO 1, in the heading, delete “, except trees”.

25

21 Section DO 2 amended (Erosion and shelter plantings)

(1) In section DO 2, replace the heading with “**Plantings for erosion, shelter, and water protection purposes**”.

(2) Replace section DO 2(2), other than the heading, with:

“(2) The person is allowed a deduction for expenditure that they incur in planting or maintaining trees or plants, whether or not on the land, for the purpose of—

30

- “(a) preventing or combating erosion of the land:
“(b) providing shelter to the land:
“(c) preventing or mitigating detrimental effects on a water-course or body of water from the discharge of farming or agricultural contaminants.” 5
- (3) **Subsection (2)** applies to a person for expenditure incurred—
(a) in the 2011–12 or a later income year:
(b) in an income year corresponding to a tax year beginning on or after 1 April 2008 and before 1 April 2011 if the person includes the expenditure as a deduction in a tax return made on or before the due date for a tax return for the income year. 10
- 22 Section DO 5 amended (Expenditure on land: planting of listed horticultural plants)**
- (1) In section DO 5(4), replace the formula with: 15
- rate × diminished value.
- (2) **Subsection (1)** applies for a person and a listed horticultural plant that the person acquires or plants after the date of introduction of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill (the **introduction date**); except if the person— 20
- (a) decides, on or before the introduction date, to purchase or plant the listed horticultural plant; and
(b) on or before the introduction date,—
(i) enters a binding contract for the purchase or planting of the listed horticultural plant: 25
(ii) after deciding to purchase or plant the listed horticultural plant, incurs expenditure in relation to the purchase or planting; and
(c) for the person’s decision to purchase or plant the listed horticultural plant,— 30
(i) has available, for the Commissioner, documents dated on or before the introduction date that evidence that the person made the decision on or before the introduction date:

- (ii) sends to the Commissioner a statutory declaration that the person made the decision on or before the introduction date.
- (2) **Subsection (1)** applies for the 2013–14 and later income years. 5
- 23 Section DO 11 amended (Improvement destroyed or made useless)**
- (1) In DO 11(1)(b), replace “irreparably damaged and made useless for the purpose of deriving income” with “made useless for the purpose of deriving the person’s income”. 10
- (2) In DO 11(1)(c), delete “irreparably damaged and”.
- (3) In DO 11(1)(d), replace “damage” with “uselessness”.
- (4) In DO 11(1)(e), replace “damage” with “uselessness”.
- (5) In section DO 11(2), replace “the improvement” with “the improvement plus a deduction for the amount of expenditure for removing the improvement from the land referred to in subsection (1)(a)”. 15
- (6) **Subsections (1) to (5)** apply for the 2010–11 and later income years.
- 24 New section DV 25 inserted (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)** 20
- After section DV 24, insert:
- “DV 25 Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests** 25
- “Deduction*
- “(1) A person is allowed a deduction for the amount of expenditure that the person has under **section EM 6** (Income and expenditure for fair dividend rate hedge portions). 30

- “Link with subpart DA*
- “(2) This section overrides the capital limitation. The general permission must still be satisfied and the other general limitations still apply.
“Defined in this Act: amount, deduction, general limitation, general permission”. 5
- (2) **Subsection (1)** applies for the 2013–14 and later income years.
- 25 Section DW 4 amended (Deduction for general insurance outstanding claims reserve)** 10
- (1) After section DW 4(1), insert:
“When this section does not apply
- “(1B) This section does not apply for contracts that section DZ 10 (General insurance with risk period straddling 1 July 1993) applies to.” 15
- (2) **Subsection (1)** applies for the 2008–09 and later income years.
- 25B New section DZ 21 (Expenditure on certain assets before 31 March 2013)**
- After section DZ 20, insert—* 20
- “DZ 21 Expenditure on certain assets before 31 March 2013**
- “When this section applies*
- “(1) This section applies when—
- “(a) a company has on 31 March 2013 an asset described in **section DG 3** (Meaning of asset for this subpart); and 25
- “(b) the asset is transferred before the end of the company’s 2013–14 income year to—
- “(i) 1 or more of the company’s shareholders in proportion to their shareholding;
- “(ii) 1 or more of the shareholders of a shareholder in proportion to their shareholding; and 30
- “(c) the company chooses to apply this section.
- “Depreciation recovery income and adjusted tax value*
- “(2) For the purposes of sections CG 1 (Amount of depreciation recovery income), EE 1(3) (What this subpart does) EE 21 to EE 24, and EE 55 to EE 60 (which relate to depreciation), the 35

transfer is treated as if it were a disposal and acquisition for an amount equal to the adjusted tax value of the asset on the date of the transfer.

Example

BoatCo has a boat on 31 March 2013 which meets the various requirements set out in subpart DG. All the shares in BoatCo are owned by Michelle. The boat has a market value of \$75,000, and an adjusted tax value of \$55,000. BoatCo transfers the boat to Michelle without payment (which is treated as a dividend of \$75,000). For depreciation purposes, BoatCo is treated as disposing of the boat for \$55,000, and Michelle is treated as acquiring it for \$55,000.

“Defined in this Act: adjusted tax value, amount, asset, company, income year, shareholder”.

25C Section EA 3 amended (Prepayments)

(1) After section EA 3(2)(d), insert:

“(db) a leasehold estate, or licence to use land, to which **section EI 4B** (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence) applies.”.

(2) In section EA 3, list of defined terms, insert “land” and “leasehold estate”.

26 New section EC 4B inserted (Compulsory use of herd scheme method for associated persons)

After section EC 4, insert:

“EC 4B Compulsory use of herd scheme method for associated persons

“When this section applies

“(1) This section applies if, in an income year (the **current year**), a person (the **transferor**) disposes of livestock of a type for which they use the herd scheme (the **transfer**) to an associated person (the **transferee**), and the transfer is not in the ordinary course of business.

“When this section does not apply

“(2) This section does not apply to the transfer of livestock if,—

- “(a) the transferor and the transferee would not be associated if the transferee or an associate were not the descendants in relation to the transferor or an associate of the transferor; and
- “(b) the transfer is at market value and the transfer’s consideration is wholly on arm’s length commercial terms and conditions, ignoring terms and conditions relating to financing; and 5
- “(cb) for the transferor and associates of the transferor, but excluding their descended associates,— 10
- “(i) all of their specified livestock in the income year of the transfer have been disposed of; and
- “(ii) they do not derive income from the disposal of specified livestock that are part of a farming business in the next 4 income years. 15
- “When this section does not apply: deceased treated as alive and transferor
- “(3) This section does not apply if it would not apply treating a transfer of livestock to or from the estate of a deceased or under a will of a deceased as a transfer made by the deceased immediately before their death to the relevant transferee. However, this subsection does not apply if the will of the deceased creates a life interest in the relevant livestock. 20
- “Compulsory use of herd scheme method
- “(34) Despite sections EC 7(2), EC 12(1), EC 22(1), and EC 25(1), 25 the transferee is treated as choosing and giving a notice of election, with application beginning for the current year, to use the herd scheme for a type of livestock, if the formula in **subsection (45)** calculates zero or a positive amount for a class in the type of livestock. 30
- “A definition and a formula
- “(45) The formula, for the purposes of **subsections (1) and (34)**, is—
- hypothetical end herd scheme amount
– minimum herd scheme amount.
- “Definition of items in formula
- “(56) In the formula— 35

- “(a) **hypothetical end herd scheme amount** is the lesser of the following 2 amounts, or the first amount if they are the same:
- “(i) the number of animals in the current year that the person would have of a class (the **relevant class**), adding back animals in all transfers described in **subsection (1)** that this section would apply to: 5
- “(ii) the number of animals of the relevant class that the person valued under the herd scheme at the end of the year before the current year: 10
- “(b) **minimum herd scheme amount** is the number of animals of the relevant class that the person has in the current year.
- “*Definitions*
- “(67) In this section,— 15
- “(a) **descendant** means the son, daughter, or grandchild of the transferor or of an associate of the transferor:
- “(b) ~~**descended associate** means an associate of the transferor that would not be associated if they or another associate were not descendants in relation to the transferor or an associate of the transferor:~~ 20
- “(b) **descended associate** means—
- “(i) an associate (the **associate**) of the transferor that would not be associated if the associate or another associate were not descendants in relation to the transferor or another associate of the transferor: 25
- “(ii) an associate (the **associate**) of the transferor that carries on a farming business separately from the transferor, and would not be associated if the associate or another associate were not relatives in relation to the transferor or another associate of the transferor. 30
- “Defined in this Act: amount, associated, class, descendant, descended associate, herd scheme, income year, notice 35

“EC 4C Value and timing of transfers

“When this section applies

“(1) This section applies to a transfer (the **transfer) of specified livestock that **section EC 4B** applies to.**

“Same tax year

5

“(2) If the transfer occurs in the same tax year for both the transferor and transferee, then the transfer is treated as a disposal and acquisition at the value of the relevant livestock under the herd scheme at the end of the transferor’s corresponding income year.

10

“Different tax year

“(3) If the transfer occurs in different tax years for the transferor and transferee, then subsection (4) or (5) applies.

“Different tax year: transferee earlier

“(4) If the transferee acquires the relevant livestock in a tax year earlier than the tax year in which the transferor disposes of it, then the transfer is treated as a disposal and acquisition at the value of the relevant livestock under the herd scheme at the beginning of the transferor’s corresponding income year.

15

“Different tax year: transferee later

20

“(5) If the transferee acquires the relevant livestock in a tax year (the **later tax year) later than the tax year in which the transferor disposes of it, then,**

“(a) the transfer is treated as a disposal and acquisition at the value of the relevant livestock under the herd scheme at the end of the transferor’s corresponding income year:

25

“(b) for the purposes of the transferee’s opening value under section EC 16, the transferee is treated as owning and valuing the relevant livestock under the herd scheme on the last day of the transferee’s income year corresponding to the tax year before the later tax year.

30

“Defined in this Act: herd scheme, income year, specified livestock, tax year”.

27 Section EC 7 amended (Valuation methods)

(1) Replace section EC 7(5) with:

- “Restrictions on use of valuation methods*
- “(5) Restrictions apply to the use of valuation methods, as described in sections EC 8 to EC 10.
- “Exception to subsection (2): express written notice required in certain cases* 5
- “(6) Subsection (2) does not apply to the extent to which an election requires a notice under **section EC 11.**”
- (2) In section EC 7, in the list of defined terms, insert “notice”.
- (3) **Subsections (1) and (2)** apply for the 2008–09 and later income years. 10
- 28 Section EC 8 replaced (Restrictions arising from use of herd scheme)**
- (1) Replace section EC 8 with:
- “EC 8 Restrictions arising from use of herd scheme**
- “First restriction* 15
- “(1) A valuation method other than the herd scheme is not available to a person, in an income year after the 2011–12 income year, for a type of specified livestock if the person—
- “(a) gives a notice of election, with application beginning for or before the income year, to use the herd scheme for the type of specified livestock; and 20
- “(b) does not give before 18 August 2011 a later notice of election, with application beginning for or before the income year, to use another valuation method for the type of specified livestock. 25
- “First exception: election after 18 August 2011 for fattening business*
- “(2) Despite **subsection (1)**, a valuation method other than the herd scheme is available to a person in an income year after the 2011–12 income year, if— 30
- “(a) the person gives a notice of election as described in **subsection (1)(a)**; and
- “(b) the person gives, on or after 18 August 2011, a later notice of election to use another valuation method for the relevant type of specified livestock (the **livestock**); and 35

“(c) the later notice is given, with application beginning for the income year (the **starting income year**) in which female breeding livestock cease being intended to be used for breeding purposes; and

“(d) the livestock are used in a fattening farming business 5
for and after the starting income year.

“Second exception: increase in a class

“(3) Despite **subsection (1)**, a valuation method other than the herd scheme is available to a person in an income year, to the extent of a person’s animals of a class, in an income year (the **current year**), that are in excess of the amount of animals of the class that the person valued under the herd scheme at the end of the year before the current year. 10

“Second restriction

“(4) A person who values livestock of a particular type under the herd scheme must value all male breeding stock of that type under the herd scheme in an income year if, in the income year, they also value any livestock of that type under the national standard cost scheme or under the cost price method. 15

“Defined in this Act: class, cost price, herd scheme, income year, national standard cost scheme”. 20

(2) In section EC 8, replace **subsections (3) and (4)** with:

“Second exception: increase in a class

“(3) Despite **subsection (1)**, a valuation method other than the herd scheme is available to a person in an income year, to the extent of a person’s animals of a class, in an income year (the **current year**), that are in excess of the person’s class closing animal balance. 25

“A definition and a formula

“(4) **Class closing animal balance** means the number of animals 30
of a class calculated using the formula—

last year’s class amount
+ associated class transfers.

“Definition of items in formula

“(5) In the formula,—

- “(a) **last year’s class amount** is the animals of the relevant class that the person valued under the herd scheme at the end of the year before the current year:
- “(b) **associated class transfers** is the amount, if positive, calculated under **section EC 4B(45)**, for the relevant class, that are transferred in the current year to the person to the extent to which **section EC 4B(34)** applies to the type of animals transferred. 5
- “*Second restriction*
- “(6) A person who values livestock of a particular type under the herd scheme must value all male breeding stock of that type under the herd scheme in an income year if, in the income year, they also value any livestock of that type under the national standard cost scheme or under the cost price method.” 10
- (3) In section EC 8, in the list of defined terms, insert “amount” and “class closing animal balance”. 15
- 29 Section EC 11 amended (Restrictions on making elections)**
In section EC 11(2)(b), replace “EC 19.” with “EC 19; and”, and after section EC 11(2)(b), insert:
- “(c) a later election, described in **section EC 8(2)(b) and (c)**, to value livestock of a particular type under a valuation method other than the herd scheme.” 20
- 30 Section EC 20 amended (Herd livestock disposed of before values determined)**
- (1) In section EC 20(1)(a), replace “specified livestock” with “the disposal of specified livestock”. 25
- (2) In section EC 20(1)(b), replace “herd livestock before the 1 February” with “specified livestock before the 1 November”. 30
- (3) Repeal section EC 20(1)(c).
- (4) After section EC 20(1), insert:
“*When this section does and does not apply*
- “(1B) This section does not apply when, in an income year, a person’s specified livestock is disposed of, and **section EC 4B(34)** applies to the transfer. However, if **section EC 4C(4)** applies to the transfer, then this section may apply.” 35

(5) **Subsections (1), (2), (3), and (4)** apply for the 2012–13 and later income years.

31 Section EC 21 repealed (Herd livestock on death before values determined)
Repeal section EC 21. 5

31B New section ED 4 inserted (Valuation of certain excepted financial arrangements denominated in foreign currency)

(1) After section ED 3, insert:

“ED 4 Valuation of certain excepted financial arrangements denominated in foreign currency 10

“Who this section applies to

“(1) This section applies to a person who, in an income year (the **current year**),—

“(a) has an excepted financial arrangement, of a type (the **arrangement type**) described in section EW 5(21) to (25) (What is an excepted financial arrangement), denominated in a foreign currency; and 15

“(b) has an amount of foreign currency payable or receivable under the excepted financial arrangement (a **foreign currency payment**) at the end of the current year. 20

“Person may choose valuation timing used for financial statements

“(2) The person may choose to value a foreign currency payment at the close of trading spot exchange rate applicable at the end of the current year, if the person, in preparing financial statements, determines values at the end of the income year for amounts of foreign currency payable or receivable by the person. 25

“Consistent valuation timing for excepted financial arrangement 30

“(3) If foreign currency payments under a person’s excepted financial arrangement are valued under **subsection (2)** for an income year, the amounts of foreign currency payable or receivable under all of the person’s excepted financial arrangements

of the arrangement type are valued in the same way for the in-
come year and later income years.

“Defined in this Act: amount, close of trading spot exchange rate, excepted
financial arrangement, financial arrangement, income year”.

- (2) **Subsection (1)** applies for a person and an excepted finan- 5
cial arrangement on and after 27 September 2012, except if
the person takes a tax position for the excepted financial ar-
rangement, relying on an election made under section EW 8
before its amendment by this Act,—
(a) in a return of income received by the Commissioner 10
before 27 September 2012:
(b) under a determination or binding ruling made by the
Commissioner before 27 September 2012.

**31C Section EE 7 amended (What is not depreciable 15
property?)**

- (1) In section EE 7(a), replace “land,” with “land other than de-
preciable intangible property.”.
(2) Replace section EE 7(e) with:
“(e) excepted financial arrangements other than depreciable 20
intangible property:”.
(3) In section EE 7, list of defined terms, insert “depreciable in-
tangible property” and “land”.
(4) **Subsections (1) and (2)** apply for the 2008–09 and later in-
come years.

**32 Section EE 60 amended (Total deductions in section 25
EE 56)**

- (1) In section EE 60(3B), replace the subsection heading with
“*Treatment of assets not available for use*”, and replace “an
item that has been withdrawn from use” with “an item that is
not available for use”. 30
(2) **Subsection (1)** applies for the 2008–09 and later income
years.

32B New section EI 4B inserted (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence)

(1) After the heading following section EI 4, insert:

“EI 4B Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence 5

“When this section applies

“(1) This section applies when a person, in an income year, derives an amount that is income under **section CC 1B** (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence), or incurs an amount of expenditure that is allowed as a deduction under **section DB 20B** (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence), and the amount is incurred or derived— 10

“(a) in relation to a right (the **land right**) that is a leasehold estate or a licence to use land; and 15

“(b) in relation to a period (the **spreading period**)—

“(i) beginning with the commencement, or a renewal or extension, of the land right; and

“(ii) ending before the earliest following date on which the land right may be terminated, or may expire, if not extended or renewed. 20

“Exception for amount of income under section CC 1 or CG 8

“(2) This section does not apply to an amount that is income under section CC 1 or CG 8 (which relate to income from land or capital contributions). 25

“Timing of income and deductions for land right with spreading period

“(3) If the amount is incurred or derived—

“(a) before the end of the spreading period, the amount is allocated in equal portions to each month that— 30

“(i) includes part of the spreading period; and

“(ii) ends after the amount is incurred or derived; and

“(iii) is included in an income year ending within 50 years from the beginning of the spreading period; and 35

“(b) at or after the end of the spreading period, the amount is allocated to the income year in which it is incurred or derived.

“Effect for income of person ceasing to have estate in land

“(4) If an amount of income would be allocated to a spreading period of a land right under **subsection (3)** for a person in the absence of this subsection, the amount is allocated to an income year (the **balance year**) ending before the end of the spreading period, if— 5

“(a) at the beginning of the balance year, the person holds the land right, or the estate in land from which the land right is granted; and 10

“(b) in the balance year, the person ceases to hold the land right, or the estate in land from which the land right is granted; and 15

“(c) the amount would be allocated under **subsection (3)** to an income year—

“(i) ending before, or including, the end of the spreading period; and

“(ii) after the balance year. 20

“Effect for deduction of person ceasing to have leasehold estate or licence

“(5) If an amount of a deduction would be allocated to a spreading period of a land right under **subsection (3)** for a person (the **affected person**) in the absence of this subsection, the amount is allocated to an income year (the **balance year**) ending before the end of the spreading period, if— 25

“(a) at the beginning of the balance year, either or both of the land right and the estate in land from which the land right is granted are held by the affected person or a person associated with the affected person; and 30

“(b) at the end of the balance year, neither of the land right and the estate in land from which the land right is granted are held by the affected person or a person associated with the affected person; and 35

“(c) the amount would be allocated under **subsection (3)** to an income year—

	“(i) <u>ending before, or including, the end of the spreading period; and</u>	
	“(ii) <u>after the balance year.</u>	
	<i>“Relationship between subsections</i>	
“(6)	Subsections (4) and (5) override subsection (3).	5
	<i>“Defined in this Act: amount, associated, deduction, estate, income, income year, land, leasehold estate, own”.</i>	
(2)	Subsection (1) applies to an amount that is incurred or derived on or after 1 April 2013 in relation to a lease or licence entered, renewed, extended, or transferred on or after that date.	10
33	New subpart EM inserted (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)	
(1)	After subpart EK, insert:	
	“Subpart EM—Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests	15
	“EM 1 Australian non-attributing shares and attributing FDR method interests	
	<i>“Application of this subpart</i>	20
“(1)	This subpart applies to determine the income and expenditure for a person’s hedges, to the extent to which their hedges have a fair dividend rate hedge portion (<i>see: subsection (2) below, and sections EM 5 to EM 7</i>), and their hedges hedge—	
“(a)	Australian non-attributing shares for which—	25
“(i)	amounts derived from disposal would be either exempt <u>excluded</u> income of the person under section CX 55 (Proceeds from disposal of investment shares), or the person’s capital receipt; and	
“(ii)	the person determines the market value on each day in the income year <u>for each of a number of periods making up the income year:</u>	30
“(b)	attributing interests in a FIF for which the person—	
“(i)	calculates FIF income using the fair dividend rate method; and	35
“(ii)	uses section EX 53 (Fair dividend rate method for unit-valuing funds and others by choice); and .	

~~“(iii) has a unit valuation period, in section EX 53, of
1 day.~~

“Specific rules

“(2) In this subpart—

“(a) **section EM 2** provides rules for who this subpart ap- 5
plies to:

“(b) **section EM 3** provides rules for what hedges this sub-
part applies to:

“(c) **section EM 4** provides rules for irrevocable elections
to choose that eligible hedges are subject to this subpart: 10

“(d) **section EM 5** provides rules that set maximum fair
dividend rate hedge portions for a person’s eligible
hedges:

“(e) **section EM 6** provides the calculation to determine the
income and expenditure for a person’s fair dividend rate 15
hedge portions:

“(f) **section EM 7** provides a quarterly test of the person’s
fair dividend rate hedge portions, and provide rules that
apply if the value of hedge portions to eligible hedged 20
assets exceeds 1.05, including a rule to not apply this
subpart:

“(g) **section EM 8** provides some definitions for this sub-
part.

“Relationship with financial arrangements rules

“(3) This subpart, and not subpart EW (Financial arrangements 25
rules), determines a person’s income and expenditure for their
fair dividend rate hedge portions.

“Defined in this Act: attributing interests, Australian non-attributing shares,
eligible hedge, excluded income, fair dividend rate hedge portion, fair dividend
rate method, FIF, hedge, income 30

“EM 2 Who does this subpart apply to?

“Who does this subpart apply to?

“(1) This subpart applies to a person if **section EM 1** applies to the
person, to the extent to which the person—

“(a) is listed in schedule 29, part A or B (Portfolio invest- 35
ment entities: listed investors), but is not a life insurer:

- “(b) is a separate identifiable fund forming part of a life insurer that holds investment subject to life insurance policies under which benefits are directly linked to the value of the investments held in the fund:
- “(c) is a fund that is equivalent to an investor class described in section HM 22(1) (Exceptions for certain funds): 5
- “(d) is a group investment fund, superannuation fund, or unit trust in which—
- “(i) 20 or more people hold an investor interest, and each person who holds an investor interest has 20% or less of the total investor interests for the fund or trust: 10
- “(ii) a person described in **subsection (1)(a) or (b)** (a **listed person**) or a person whose only income is charitable income (a **charitable person**) holds an investor interest, and each person who is not a listed person or a charitable person holds an investor interest of 20% or less of the total investor interests for the fund or trust. 15
- “*Combining people and investor interests* 20
- “(2) For the purposes of applying **subsection (1)(d)(i) and (ii)**, if a person is associated with another person, they are treated as 1 person who holds their combined investor interests, if their combined investor interests total 5% or more of the total investor interests for the fund or trust. **Subsection (3)** overrides this subsection. 25
- “*Exception to combining people and investor interests*
- “(3) **Subsection (2)** does not apply to make 2 associated people into 1 person, or to combine investor interests of 2 associated persons, if 1 of them is a listed person. 30
- “Defined in this Act: associated person, exempt income, group investment fund, income, investor class investor interest, life insurance policies, life insurer, superannuation fund, unit trust
- “**EM 3 What hedges does this subpart apply to?**
- This subpart applies to a person’s hedge (an **eligible hedge**) if **section EM 1** applies to the hedge, and the hedge— 35
- “(a) is a contract to conditionally or unconditionally acquire or dispose of foreign exchange in return for

New Zealand currency, or is a swap with one leg
denominated in a foreign currency and the other leg
denominated in New Zealand currency; and

- “(b) is not an option; and
- “(c) is not entered into with an associated person; and 5
- “(d) has, under IFRSs, a fair value of zero when it is first
entered into; and
- “(e) is subject to an election under **section EM 4**.
“Defined in this Act: associated person, eligible hedge, hedge, IFRS

“**EM 4 Irrevocable elections** 10

“*Elections*

“(1) ~~This subpart applies to a person’s eligible hedge, to the extent
of their fair dividend rate hedge portion for the eligible hedge,
if the person has made an election to apply this subpart to the
eligible hedge when the hedge is first entered into.~~ 15

“(1) This subpart applies to a person’s eligible hedge, to the extent
of their fair dividend rate hedge portion for the eligible hedge,
if the person has made an election to apply this subpart under
subsection (2) or (3).

“*Elections: specific* 20

“(2) For the purposes of **subsection (1)**, for each eligible hedge,
an election under this subsection must, unless **subsection (3)**
applies, be made—

- “(a) when the hedge is first entered into; and
- “(b) when a hedge of the hedge is first entered into. 25

“*Election: general*

“(3) For the purposes of **subsection (1)**, a general election under
this subsection may be made before the eligible hedge or a
hedge of the hedge is entered into, and that election will apply
automatically to the relevant hedge when it is entered into. 30

“*Elections: effect irrevocable*

“(24) An election under **this section** is irrevocable and cannot be
amended, except for a general election under **subsection (3)**
may be changed before a relevant hedge is entered into. The
income and expenditure for the fair dividend rate hedge por- 35

tion of the relevant hedge must be determined under this subpart.

“Elections: effect on some or all

~~“(35)~~ The portion of a person’s eligible hedge that is not a fair dividend rate hedge portion does not give rise to income and expenditure under this subpart, despite an election for the eligible hedge, and subpart EW (Financial arrangements rules) determines a person’s income and expenditure for that portion. 5

“Defined in this Act: eligible hedge, fair dividend rate hedge portion, income

“EM 5 Fair dividend rate hedge portions 10

“Maximum calculated

~~“(1)~~ This section calculates the maximum fair dividend rate hedge portion for a person’s eligible hedge.

“Choice of fair dividend rate hedge portion : can not be changed 15

~~“(2)~~ ~~A person must, subject to the maximum calculated under this section, choose the fair dividend rate hedge portion for a person’s eligible hedge when the hedge is first entered into. The person’s choice of fair dividend rate hedge portion for an eligible hedge is irrevocable, and cannot be amended. 20~~

“(2) A person must, subject to the maximum calculated under this section, irrevocably choose the fair dividend rate hedge portion for a person’s eligible hedge. 20

“Choice of formulas

~~“(3)~~ A person may choose to use either **subsections (4) and (5), or subsections (6) to (10)**, to calculate the maximum fair dividend rate hedge portions for all of the person’s eligible hedges when the hedge is first entered into. They may not choose to use, for example, **subsection (4)** for some hedges and **subsection (6)** for other hedges. 25 30

“First formula

~~“(4)~~ The maximum fair dividend rate hedge portion for a person’s eligible hedge (the **calculation hedge**) is the lesser of 100% and the amount, expressed as a percentage, calculated, using the formula in this subsection, when the hedge is first entered 35

into. **Subsection (8)** overrides this subsection. The formula is—

$$1.05 \times (\text{eligible currency assets} + \text{proxied currency assets}) - \text{FDR hedges amount}$$

calculation hedge amount.

“Definition of items in formula

- “(5) In the formula in **subsection (4)**, all items are expressed in the calculation currency (*see*: **eligible currency assets**), and— 5
- “(a) **eligible currency assets** is the total market value of a person’s assets described in **section EM 1(1)(a) and (b)** that are denominated in the same currency (the **calculation currency**) that the calculation hedge hedges:
- “(b) **proxied currency assets** is,— 10
- “(i) unless **subparagraph (ii) or (iii)** applies, the total market value of a person’s assets described in **section EM 1(1)(a) and (b)** that are denominated in a currency (the **proxied currency**) other than the calculation currency, if an eligible hedge 15 that is denominated in the calculation currency acts like hedging for the assets due to a relationship between exchange rate movements in the proxied currency and the calculation currency:
- “(ii) zero, if the person has hedges denominated in the proxied currency: 20
- “(iii) zero, if the person has a hedge, denominated in a currency other than the proxied currency or the calculation currency, that acts like hedging for the assets due to a relationship between exchange 25 rate movements in the proxied currency and that other currency:
- “(c) **FDR hedges amount** is the amount of calculation currency hedged by a person’s fair dividend rate hedge portions, but excluding the portion for the calculation hedge: 30
- “(d) **calculation hedge amount** is the amount of foreign currency that is hedged by the calculation hedge.

“*Second formula*

“(6) The maximum fair dividend rate hedge portion for a person’s eligible hedge (the **calculation hedge**) is the lesser of the amounts, expressed as percentages, calculated using the formula in this subsection and the formula in **subsection (9)**, 5
when the hedge is first entered into. **Subsection (8)** overrides this subsection amount, expressed as a percentage, calculated using the formula in this subsection when the hedge is first entered into. **Subsections (8) to (10)** override this formula. 10
The formula is—

$$1 - \frac{\text{non-eligible currency assets}}{\text{hedges amount.}}$$

“*Definition of items in formula*

“(7) In the formula in **subsection (6)**, all items are expressed in New Zealand currency, and—
“(a) **non-eligible currency assets** is the total market value of a person’s assets that: 15
“(i) are denominated in a foreign currency; and
“(ii) are not described in **section EM 1(1)(a) and (b)**:
“(b) **hedges amount** is the amount of foreign currency that is hedged by a person’s hedges including the calculation hedge. 20

“*Exception for more than 100% non-eligible currency asset hedges*

“(8) If the maximum fair dividend rate hedge portion for the calculation hedge is less than zero, then the fair dividend rate hedge portion for the hedge is zero. 25

“*Exception for over-hedging*

“(9) If the amount calculated using the formula in this subsection is greater than 1.05, then the fair dividend rate hedge portion for the calculation hedge is zero. The formula is—

$$\frac{\text{currency assets}}{\text{hedges amount.}}$$

“Definition of items in formula

“(10) In the formula in **subsection (9)**, all items are expressed in New Zealand currency, and—

“(a) **currency assets** is the total market value of a person’s assets that are denominated in a foreign currency: 5

“(b) **hedges amount** is the amount of foreign currency that is hedged by a person’s hedges including the calculation hedge.

*“Formula for purposes of **subsection (6)***

“(9) The formula for the purposes of **subsection (6)** is: 10

$$\frac{1.05 \times \text{eligible currency assets} - \text{FDR hedges amount}}{\text{current hedge amount}}$$

“Definition of items in formula

“(10) In the formula in **subsection (10B)**, all items are expressed in New Zealand currency, and—

“(a) **eligible currency assets** is the total market value of a person’s assets described in **section EM 1(1)(a) and (b)**: 15

“(b) **FDR hedges amount** is the amount of foreign currency hedged by a person’s fair dividend rate hedge portions, but excluding the portion for the calculation hedge:

“(c) **current hedge amount** is the amount of foreign currency that is hedged by the calculation hedge. 20

“Relationship with subject matter

“(11) **Section EM 7** overrides this section.

“Defined in this Act: eligible hedge, fair dividend rate hedge portion, hedge, income 25

“EM 6 Income and expenditure for fair dividend rate hedge portions

“Using the formula to calculate income and expenditure

“(1) A person uses the formula in **subsection (2)** on each day for each valuation period described in **subsection (3)(b)** that this subpart applies to them. A positive amount from the formula 30

is a person’s income for their fair dividend rate hedge portions. A negative amount from the formula is a person’s expenditure for their fair dividend rate hedge portions.

“*Formula*

- “(2) The formula for determining a person’s income and expenditure for their fair dividend rate hedge portions is— 5

$$\frac{\text{FDR portions}^2 \text{ value} \times 0.05}{\text{days in the year.}}$$

$$\text{FDR portions}^2 \text{ value} \times 0.05 \times \frac{\text{valuation period}}{\text{days in the year.}}$$

“*Definition of items in formula*

- “(3) In the formula,—

“(a) **FDR portions² value** is the market value, in New Zealand currency, on the relevant day, of a person’s fair dividend rate hedge portions: 10

“(a) **FDR portions’ value** is the market value of a person’s fair dividend rate hedge portions at the start of a relevant valuation period in New Zealand currency:

“(b) **valuation period** is the number of days in whichever of the following periods is relevant: 15

“(i) the period described in **section EM 1(a)(ii)**:

“(ii) the unit valuation period described in section EX 53 (Fair dividend rate method for unit-valuing funds and others by choice). 20

“(c) **days in the year** is the number of days in the income year in which the relevant day period falls.

“Defined in this Act: amount, fair dividend rate hedge portion, income, income year

“**EM 7 Quarterly test of fair dividend rate hedge portions** 25

“*Quarterly FDR hedging ratio*

- “(1) A person must use the first formula, in **subsection (2)**, on the last day of a quarter of an income year, to calculate their quarterly FDR hedging ratio.

“First formula

- “(2) The formula for calculating the person’s quarterly FDR hedging ratio is—

$$\frac{\text{FDR hedges amount}}{\text{eligible currency assets.}}$$

“Definition of items in formula

- “(3) In the formula in **subsection (2)**, all items are expressed in New Zealand currency, and—

“(a) **FDR hedges amount** is the total amount of foreign currency that is hedged by a person’s fair dividend rate hedge portions:

“(b) **eligible currency assets** is the total market value of a person’s assets described in **section EM 1(1)(a) and (b)**.

“Second formula

- “(4) If a person’s quarterly FDR hedging ratio for a quarter is greater than 1.05 and **subsection (6)** does not apply, then, despite **section EM 5**, the fair dividend rate hedge portion of each eligible hedge, from 5 working days after the last day of the quarter, is calculated using the formula—

$$\frac{0.85}{\text{quarterly FDR hedging ratio}} \times \text{FDR hedge portion.}$$

“Definition of items in second formula

- “(5) In the formula in **subsection (4)**,—

“(a) **FDR hedge portion** is the fair dividend rate hedge portion of the relevant eligible hedge:

“(b) **quarterly FDR hedging ratio** is the person’s quarterly FDR hedging ratio for the relevant quarter.

“Subpart not applied for over-hedging

- “(6) If a person’s quarterly FDR hedging ratio is greater than 1.05 on the last day of two consecutive quarters of an income year (the **over-hedged year**), then this subpart will not apply to the person for the remaining quarters of the over-hedged year

and the income year after the over-hedged year. Subpart EW (Financial arrangements) applies.

“Defined in this Act: eligible hedge, fair dividend rate hedge portion, hedge, income year, person, quarterly FDR hedging ratio

- “**EM 8 Some definitions** 5
In this subpart,—
“**Australian non-attributing shares** means a person’s rights in a FIF in an income year if the rights—
“(a) are a share in a company resident in Australia at all times in the year when the person holds a right in the 10
company; and
“(b) are not an attributing interest, because of the application of section EX 31 (Exemption for ASX-listed Australian companies)
“**eligible hedge** means a hedge described in **section EM 3** 15
“**fair dividend rate hedge portion** means the percentage portion of the hedging for an eligible hedge under this subpart
“**fair dividend rate hedge portion** means the percentage portion of the hedging of the foreign currency exchange rate movements in the value of a person’s assets for an eligible hedge under this subpart 20
“**hedge** means a financial arrangement that a person enters into with the sole purpose of offsetting exposure to foreign currency exchange rate movements in the value of their assets; and **hedging** is the effect of holding a hedge for that purpose. 25
“**hedge**—
“(a) means 1 or more related financial arrangements that a person enters into with the sole purpose and net effect of offsetting exposure to foreign currency exchange rate movements in the value of their assets, and **hedging** is the effect of holding a hedge for that purpose; and 30
“(b) includes, in a hedge described in **paragraph (a)**, a hedge of that hedge
“**investor interest** means—
“(a) if the relevant entity is a company, a shareholding that 35
gives the holder an entitlement to a distribution of the proceeds from the entity’s investments; or

“(b) if the relevant entity is not a company, an interest that, under the rules of the entity, gives the holder an entitlement to a proportion of the funds available for distribution of the proceeds from the entity’s investments, and that distribution is the same as if the entity were a company and the holder were a shareholder in that company
5
“quarterly FDR hedging ratio means the ratio calculated using the formula in **section EM 7(2)**.”

(2) **Subsection (1)** applies for the 2013–14 and later income years. 10

33B Section EW 8 amended (Election to treat certain excepted financial arrangements as financial arrangements)

(1) In section EW 8, replace the heading with “**Some short-term agreements for sale and purchase acquired in business: election to treat as financial arrangements**”. 15

(2) Replace section EW 8(1) and (2) with:

“Who this section applies to

“(1) This section applies to a person carrying on a business of acquiring short-term agreements for sale and purchase for the purpose of collecting amounts owing, under the agreements, at the time of acquisition. 20

“Election

“(2) The person may choose to treat all such acquired short-term agreements for sale and purchase as financial arrangements.”

(3) In section EW 8(3), replace “chosen” with “acquired”. 25

(4) In section EW 8(5), insert “excepted” before “financial arrangements”.

(5) **Subsections (2) and (3)** apply for a person and an excepted financial arrangement on and after 27 September 2012, except if the person takes a tax position for the excepted financial arrangement, relying on an election made under section EW 8 before its amendment by those subsections,— 30

(a) in a return of income received by the Commissioner before 27 September 2012:

(b) under a determination or binding ruling made by the Commissioner before 27 September 2012. 35

34 Section EX 21 amended (Attributable CFC amount and net attributable CFC income or loss: calculation rules)

In section EX 21(13)(f),—

- (a) replace “land, except trees” with “land”; and
- (b) replace “Erosion and shelter plantings” with “Plantings for erosion, shelter, and water protection purposes”. 5

34B Section EX 50 amended (Attributable FIF income method)

(1) Replace section EX 50(4C)(a) with:

“(a) the person uses the attributable FIF income method for the foreign company or would be able to use that method in the absence of section EX 35; and”. 10

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

34C Section EX 63 amended (Consequences of changes in method) 15

(1) Replace section EX 63(2)(b) with:

“(b) reacquired the interest at the start of the period; and”.

(2) Replace section EX 63(3)(b) with:

“(b) reacquired the interest at the start of the income year; and”. 20

(3) Replace section EX 63(4)(b) with:

“(b) reacquired the interest at the start of the income year; and”.

(4) **Subsections (1) to (3)** apply for income years beginning on or after 1 July 2011. 25

34D New heading and sections EZ 64 to EZ 68 inserted

After section EZ 63, insert:

*“Restructuring under New Zealand Railways
Corporation Restructuring Act 1990*

“EZ 64 New Zealand Railways Corporation restructure:
purpose and initial amounts for tax purposes

“Purpose

5

“(1) The purpose of **this section, sections CW 65, EZ 65 to
EZ 67, and YC 18C** (which relate to the New Zealand Rail-
ways Corporation restructure) is to ensure that the Railways
vesting gives rise to no tax consequences other than those ne-
cessary to account for the vesting of the Railways assets and
liabilities from a public authority to a state enterprise. The
treatments of KiwiRail Holdings Limited, New Zealand Rail-
ways Corporation, and associated companies in those sections
also applies for the purposes of the Tax Administration Act
1994.

10

15

“Depreciation

“(2) For a Railways asset that is depreciable property, KiwiRail
Holdings Limited calculates, on and after 31 December 2012,
depreciation recovery income and deductions for amounts of
depreciation loss as if KiwiRail Holdings Limited had ac-
quired the asset on 31 December 2012 for the amount recorded
in a schedule prepared by KiwiRail Holdings Limited for the
purposes of this section.

20

“Financial arrangements: consideration

“(3) KiwiRail Holdings Limited is treated as—

25

“(a) paying an amount of consideration, for a Railways as-
set that is a financial arrangement, equal to the amount
recorded in KiwiRail Holdings Limited’s financial ac-
counts for that arrangement on 31 December 2012;

“(b) being paid an amount of consideration, for a Railways
liability that is a financial arrangement, equal to the
amount recorded in KiwiRail Holdings Limited’s fi-
nancial accounts for that arrangement on 31 December
2012.

30

“Financial arrangements: overrides

“(4) Sections EW 38, EW 42, and GB 21 (which relate to financial arrangements) do not apply for the Railways vesting.

“Defined in this Act: amount, assessable income, associate, company, consideration, depreciation loss, depreciable property, depreciation recovery income, financial arrangement, pay, public authority, Railways assets and liabilities, Railways vesting, state enterprise

5

“EZ 65 Expenditure or loss incurred, and amounts derived

“Expenditure or loss incurred, and amounts derived

“(1) KiwiRail Holdings Limited and New Zealand Railways Corporation are treated as the same person for the period prior to and including 31 December 2012 for the purpose of determining the following:

10

“(a) whether a deduction is allowed for an amount of expenditure or loss incurred by KiwiRail Holdings Limited in connection with the Railways assets or liabilities:

15

“(b) the amount of any deduction of KiwiRail Holdings Limited in connection with the Railways assets or liabilities:

20

“(c) whether an amount derived by KiwiRail Holdings Limited in connection with the Railways assets or liabilities is income:

“(d) the amount of any income of KiwiRail Holdings Limited in connection with the Railways assets or liabilities.

25

“Treatment of New Zealand Railways Corporation

“(2) For the purposes of **subsection (1)**, New Zealand Railways Corporation is treated as if it was a company that was not a public authority.

30

“Defined in this Act: amount, company, deduction, income, public authority, Railways assets and liabilities

“EZ 66 Prepayments

“Deduction

“(1) KiwiRail Holdings Limited has, for the 2012–13 income year, a deduction under section DB 50 (Adjustment for pre-

35

payments) for an unexpired portion that is connected with a Railways asset or liability, as described in **subsection (2)**.

“Unexpired portion

- “(2)** For the purposes of **subsection (1)**, the **unexpired portion** is the unexpired portion that New Zealand Railways Corporation would have had by applying section EA 3(4) to (7) (Prepayments) on 30 December 2012 to an amount of expenditure incurred by New Zealand Railways Corporation in connection with a Railways asset or liability, treating—
- “(a)** 30 December 2012 as the end of an income year; and
- “(b)** New Zealand Railways Corporation as a taxpayer with a deduction for the expenditure, if that expenditure is described in section EA 3(1).

“Future application of section EA 3

- “(3)** For the 2012–13 income year and later income years, section EA 3 applies to KiwiRail Holdings Limited as if it had been allowed a deduction for expenditure to which **subsection (1)** applies.

“Defined in this Act: deduction, income year, Railways asset, Railways liability, taxpayer

“EZ 67 Leased assets

“Allocation of expenditure

- “(1)** KiwiRail Holdings Limited calculates, for the 2012–13 income year, an expenditure allocation under section EJ 10 (Personal property lease payments) for a personal property lease payment that is connected with a Railways asset or liability as if 31 December were the start of the 2012–13 income year.

“Future application of section EJ 10

- “(2)** For the 2013–14 income year and later income years, section EJ 10 applies to KiwiRail Holdings Limited as if, for the period up to and including 31 December 2012, New Zealand Railways Corporation and KiwiRail Holdings Limited were the same person.

“Defined in this Act: deduction, income year, personal property lease payment, Railways assets and liabilities

“EZ 68 Definitions

In sections **EZ 64 to EZ 67**,—

“asset—

“(a) means property of any kind, whether or not situated in New Zealand, whether tangible or intangible, real or personal, corporeal or incorporeal, and whether or not subject to rights; and 5

“(b) includes—

“(i) land, including legal and equitable rights of occupation of land or buildings: 10

“(ii) buildings, vehicles, plant equipment, machinery, fixtures and fittings, and legal and equitable rights in them:

“(iii) choses in action and money:

“(iv) legal and equitable rights of any kind, and applications, objections, submissions, and appeals in respect of those rights: 15

“(v) intellectual property and applications pending for intellectual property:

“(vi) goodwill, and any business undertaking 20

“legal and equitable rights includes all rights, powers, privileges, interests, leases, licences, approvals, consents, designations, permissions, dispensations, authorisations, benefits, defences, immunities, claims, and equities of any kind, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective 25

“liabilities means liabilities, debts, charges, duties, and obligations of every description, whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere 30

“Railways assets and liabilities means assets and liabilities, or parts of assets and liabilities, as the case may be, specified in an Order in Council made under the New Zealand Railways Corporation Restructuring Act 1990, and **Railways assets** and **Railways liabilities** have corresponding meanings 35

“Railways vesting means the vesting of the Railways assets and liabilities in KiwiRail Holdings Limited on 31 December

2012 in accordance with the New Zealand Railways Corporation Restructuring Act 1990.

“Defined in this Act: asset, land, legal and equitable rights, liabilities, New Zealand, Railways assets and liabilities, Railways vesting”.

34E Section FB 15 replaced (Specified livestock valued under herd scheme) 5

Replace section FB 15 with:

“FB 15 Specified livestock valued under herd scheme

If specified livestock is transferred on a settlement of relationship property and the specified livestock is valued under the herd scheme by the transferor, then **sections EC 4B and EC 4C** apply. 10

“Defined in this Act: herd scheme, settlement of relationship property, specified livestock”

34F Section FM 31 amended (Eligibility rules) 15

In section FM 31(1)(g), replace “subsections (5) and (6) do not” with “subsection (6) does not”.

34G Section FN 4 amended (Eligibility rules)

In section FN 4(1)(g), replace “subsections (4) and (5) do not” with “subsection (5) does not”. 20

34H Section GB 24 amended (Exemption for genuine contracts)

Replace section GB 24(2)(h) with:

“(h) no part of the income or share of profits derived by the relative, or company of which the relative is a shareholder or director, is either a disposition without fully adequate consideration in money or money’s worth passing to the person making the disposition or a disposition that any part of does not have fully adequate consideration in money or money’s worth passing to the person making the disposition.” 25
30

35 Section GC 5 amended (Leases for inadequate rent)

(1) After section GC 5(1), insert:

“When this section does not apply

“(1B) This section does not apply when the property is an asset to which **subpart DG** (Expenditure related to use of certain assets) applies.”

(2) In section GC 5, in the list of defined terms, insert “asset”. 5

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

(3) **Subsection (1)** applies for the 2013–14 and later income years for an item of property referred to in **section DG 3(2)(a)(i)**. **Subsection (1)** applies for the 2014–15 and later income years for an item of property referred to in **section DG 3(2)(a)(ii) and (iii)**. 10

36 Section HA 33 amended (Revocation of shareholders’ elections: by event)

(1) In section HA 33(1)(c), replace “sections HA 28 and HA 29 apply,” with “section HA 28(b) applies, or section HA 29 applies and the election is made in accordance with section HA 28(b),”. 15

(2) **Subsection (1)** applies for the 2008–09 and later income years. 20

36B Section HG 2 amended (Partnerships are transparent)

In section HB 2, in the list of defined terms, delete “rebate”.

36C Section HG 3 amended (General provisions relating to disposals)

After section HG 3(3), insert as a list of defined terms “entering partner, exiting partner, partner, partnership, return of income, small partnership”. 25

36D Section HM 12 amended (Income types)

In section HM 12(1)(b)(ix), replace “policy.” with “policy:” and insert: 30

“(x) a rebate on a management fee.”

36E Section HM 19C amended (Modified rules for foreign investment variable-rate PIEs)

In section HM 19C(1), replace “HM 11(1)(a) and (d)” with “HM 11(1)(a) and (b)”.

36F Section HM 37 amended (When income cannot be attributed)

5

(1) Replace section HM 37(2), other than the heading, with:

“(2) The PIE is treated for the purposes of sections HM 35 and HM 36 (which relate to the calculation of amounts attributable to investors) as the sole investor in an investor class having an interest in the income or property.”

10

(2) After section HM 37(2), insert:

“Exception for foreign investment PIE

“(3) In the application, under **subsection (2)**, of section HM 36 to a foreign investment PIE, the item deductions in the formula in section HM 35(2) for the investor class consisting of the PIE is treated as being the amount calculated using the formula—

15

$$\frac{\text{other than notified interests}}{\text{total interests}} \times \text{unadjusted item.}$$

“Definition of items in formula

“(4) In the formula,—

“(a) **other than notified interests** is the value of investor interests in the PIE held at the end of the attribution period by investors other than notified foreign investors:

20

“(b) **total interests** is the total value of investor interests in the PIE at the end of the attribution period:

“(c) **unadjusted item** is the value of the item deductions that would be calculated for the investor class in the absence of **subsection (3)**.”

25

36G Section HM 60 amended (Notified investor rates)

(1) Replace section HM 60(3), other than the heading with:

“(3) For an investor for an income year, a multi-rate PIE must apply the most recent notified investor rate to every day in the calculation period beginning with—

30

“(a) the later of—

- “(i) the day after the day on which the multi-rate PIE receives the notice:
- “(ii) the first day of the calculation period for which the notified investor rate is supplied; or
- “(b) the first day of the calculation period in which the multi-rate PIE receives the notice.” 5
- (2) In section HM 60(3B), replace “the period” with “a period”.
- (3) After section HM 60(3B), insert:
“Exception for 2010–11 income year
- “(3C) For the 2010–11 income year, a multi-rate PIE,— 10
- “(a) for a day before 1 October 2010, may apply a notified investor rate corresponding to the most recent notified investor rate, ignoring the Taxation (Budget Measures) Act 2010:
- “(b) for a day on or after 1 October 2010, must apply the most recent notified investor rate on or after 1 October 2010. 15
- “Consistent application of rates
- “(3D) In applying notified investor rates, a multi-rate PIE must use the same approach under **subsections (3) and (3C)** for all investors for an income year.” 20
- (4) **Subsections (1), (2), and (3)** apply for the 2010–11 and later income years.
- 36H** **New section IQ 2C inserted (Effect of FIF net loss if attributed FIF income method not available)** 25
- (1) After section IQ 2B, insert:
“IQ 2C Effect of FIF net loss if attributed FIF income method not available
- “When this section applies
- “(1) This section applies for a person and a country (the **jurisdiction**) when— 30
- “(a) the person has an amount (the **available BE loss**) of FIF net loss calculated using the branch equivalent method—
- “(i) relating to a tax year (the **loss year**) before the first tax year for which this section applies to the person; and 35

- “(ii) relating to a FIF that is resident in the jurisdiction in the loss year; and
- “(iii) carried forward to a tax year (the **current year**) in which this section applies to the person; and
- “(b) the person is not able to use the attributable FIF income method in the current year for the person’s interest in the FIF; and 5
- “(c) the person would be able to use the attributable FIF income method in the current year for the person’s interest in the FIF if the interest met the requirements of section EX 46(3)(a)(ii) (Limits on choice of calculation method); and 10
- “(d) the person does not have an income interest of 10% or more in a CFC in the jurisdiction in the current year; and 15
- “(e) the person does not have an attributing interest in a FIF in the jurisdiction in the current year for which the person can use the attributable FIF income method.
- “Use of FIF net loss*
- “(2) The person’s available BE loss is available to be subtracted from the person’s FIF income, to the extent of the FIF income, in the current year from the FIF, if the FIF is resident in the jurisdiction in the current year. 20
- “Treatment of surplus*
- “(3) If the person cannot use all of the available BE loss in the current year, the surplus is available to be carried forward for use under **subsection (2)** in another tax year. 25
- “Defined in this Act: amount, attributable FIF income method, attributing interest, branch equivalent method, CFC, FIF, FIF income, FIF net loss, income interest, tax year”.* 30
- (2) **Subsection (1)** applies for income years beginning on or after 1 July 2011.
- 36I Section LA 6 amended (Remaining refundable credits: PAYE, RWT, and certain other items)**
- (1) In section LA 6(1)(f), replace “PIEs.” with “PIEs):” and insert: 35

- “(g) section LS 2 (Tax credits for investors in multi-rate PIEs), and the person is not a natural person or is a natural person having the tax credit as a beneficiary of a trust:
- “(h) section LS 3 (Tax credits for zero-rated investors), and the person is not a natural person or is a natural person having the tax credit as a beneficiary of a trust: 5
- “(i) section LS 4 (Tax credits for certain exiting investors), and the person is not a natural person or is a natural person having the tax credit as a beneficiary of a trust.” 10
- (2) In section LA 6, in the compare note, delete “LH 1(6)”.
- 36J Section LH 17 amended (Some definitions)**
In section LH 17, in the list of defined terms, insert “associated internal software developer”.
- 37 Section LK 1 amended (Tax credits relating to attributed CFC income)** 15
- (1) Replace section LK 1(1)(d) with:
- “(d) the amount of foreign income tax paid by the person in relation to the CFC from which the income is derived:
- “(e) the amount of foreign tax paid, under legislation of another country or territory that is equivalent of the international tax rules, by a foreign company in relation to income derived by the CFC.” 20
- (2) **Subsection (1)** applies for the 2008–09 and later income years. 25
- 37B Section LP 2 amended (Tax credits for supplementary dividends)**
In section LP 2(7), insert as a subsection heading “*Relationship with section OZ 12*”.
- 37C Section LP 5 amended (Application of benchmark dividend rules and imputation credit ratio)** 30
In section LP 5(3), insert as a subsection heading “*Relationship with section OZ 12*”.

- 37D** Section LP 8 amended (Relationship with exempt income rules)
In section LP 8(5), insert as a subsection heading “*Relationship with section OZ 12*”.
- 38** **Sections LZ 2 to LZ 5 repealed** 5
 (1) Repeal sections LZ 2 to LZ 5.
 (2) **Subsection (1)** applies for the 2013–14 and later income years.
- 39** **Section MB 1 amended (Adjustments for calculation of family scheme income)** 10
 In section MB 1(2)(a) replace “CW 28(1)(e)” with “**CW 28(2)(a)**”.
- 39B** New section MB 7B inserted (Family scheme income from employment benefits—employees not controlling shareholders) 15
 After section MB 7, insert:
“**MB 7B Family scheme income from employment benefits—employees not controlling shareholders**
“*When this section applies*
“(1) This section applies for the purpose of determining the amount that represents the family scheme income of a person to whom section MB 8 does not apply for an income year when the person has an employer who makes available—
“(a) a motor vehicle for the person’s private use when, under the terms of the person’s employment, the person would be entitled to a greater amount of employment income should the person choose, or have chosen, not to receive the benefit of the motor vehicle: 25
“(b) a short-term charge facility as defined in section CX 25(3) (Benefits provided by charitable organisations). 30
“*What is included in family scheme income*
“(2) The person’s family scheme income for the income year includes an amount equal to the total for the person and the income year of amounts, each of which is— 35

- “(a) the amount by which the employment income of the person would be greater in the absence of a benefit referred to in **subsection (1)(a)**:
- “(b) the value, including fringe benefit tax, of a fringe benefit provided to the person under a short-term charge facility referred to in **subsection (1)(b)**, if the total value of such fringe benefits, not including fringe benefit tax, provided in the income year is more than the lesser for the income year of—
- “(i) 5% of the employee’s salary or wages:
- “(ii) \$1,200.
- “Defined in this Act: amount, employee, employer, employment, employment income, family scheme income, fringe benefit, fringe benefit tax, income year, motor vehicle, private use, salary or wages, short-term charge facility”.
- 39C Section MB 8 amended (Family scheme income from fringe benefits)** 15
In section MB 8, replace the heading with “**Family scheme income from fringe benefits: controlling shareholders**”.
- 39D Section MD 16 amended (Calculation of parental tax credit abatement)** 20
In section MD 16, delete the compare note.
- 40 Section ME 3 amended (Meaning of net family scheme income)**
- (1) In section ME 3(3)(a)(i), replace “net income under section MB 1 (Adjustments for calculation of family scheme income)” with “family scheme income”. 25
- (2) In section ME 3, in the list of defined terms, insert “family scheme income”.
- (3) **Subsections (1) and (2)** apply for the 2013–14 and later tax years. 30
- 41 Section OB 71 amended (Imputation additional tax on leaving wholly-owned group)**
In section OB 71(5)(a)(ii), replace “RM 2, and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.

- 42 Section OB 72 amended (Imputation additional tax on joining wholly-owned group)**
In section OB 72(6)(a)(ii), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.
- 43 Section OB 72B amended (Limit on using entitlement to refund after joining wholly-owned group)** 5
(1) In section OB 72B(3)(a)(ii), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.
(2) In section OB 72B(6), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”. 10
- 44 Section OP 6 amended (Provisions applying to consolidated imputation groups)**
In section OP 6(7), replace “sections RM 2 or RM 4 to RM 6” with “section RM 2, RM 4, or RM 5”.
- 44B Section RD 39 amended (Benefits provided by charitable organisations)** 15
(1) After section RD 39(1)(a), insert:
“(ab) the amount that the organisation pays for or towards consideration, other than money or money’s worth, for goods and services obtained by the employee under the short-term charge facility:”. 20
(2) In section RD 39(1)(b), after “goods and services”, insert “or obtaining other consideration for the goods and services”.
(3) In section RD 39(2)(c), after “no more than”, insert “the lesser of \$1,200 and”. 25
(4) In section RD 39(3), after “more than”, insert “the lesser of \$1,200 and”.
(5) In section RD 39(4), replace “paragraph (a) or (b)” with “of paragraph (a) and (b)”.
- 44C Section RD 54 amended (Value of and payments towards fringe benefits)** 30
In section RD 54(2), replace “the amount paid” with “the lesser of the value of the benefit and the amount paid”.

45 Section RD 60 amended (Close company option)

- (1) In section RD 60(1)(a), replace “for the tax year” with “for the tax year, as modified by section RA 20(2) (Amalgamation of companies),”.
- (2) **Subsection (1)** applies for the 2008–09 and later income 5 years.

46 Section RM 2 amended (Refunds for overpaid tax)

- (1A) In section RM 2(1), replace paragraph (b) with:
- “(b) the Commissioner is satisfied, or receives notice, that the person is entitled to the refund before the end of— 10
- “(i) the 4-year period under section 108 of the Tax Administration Act 1994 for amendment of an assessment, if **subparagraph (ii)** does not apply; or
- “(ii) the extended period allowed by the Commis- 15 sioner under section 78B of that Act, if the Commissioner exercises the discretion under that section.”
- (1) Repeal section RM 2(2).
- (2) **Subsection (1)** applies for the 2013–14 and later tax years. 20
- (2) **Subsections (1A) and (1)** apply to overpayments for the 2013–14 and later tax years.

47 Section RM 4 amended (Overpayment on amended assessment)

- (1A) In section RM 4(1)(c), replace “at the end of the income year” 25 with “from the end of the tax year”.
- (1) Repeal section RM 4(2).
- (1B) In section RM 4, in the list of defined terms,—
- (a) delete “income year”;
- (b) insert “tax year”. 30
- (2) **Subsection (1)** applies for the 2013–14 and later tax years.
- (2) **Subsections (1A), (1), and (1B)** apply to overpayments for the 2013–14 and later tax years.

- 48 Section RM 6 repealed (Refunds after 4-year period ends)**
- (1) Repeal section RM 6.
- (2) ~~Subsection (1) applies for the 2013–14 and later tax years.~~
- (2) Subsection (1) applies to overpayments for the 2013–14 and later tax years. 5
- 49 Section RM 10 amended (Using tax refund to satisfy tax liability)**
In section RM 10(1), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.
- 50 Section RM 13 amended (Limits on refunds for ICA companies)** 10
In section RM 13(1)(a), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.
- 51 Section RM 17 amended (Treatment of further income tax paid)** 15
In section RM 17(1), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.
- 52 Section RM 22 amended (Limits on refunds for Maori authorities)**
In section RM 22(1), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”. 20
- 53 Section RM 23 amended (Limits on refunds when Maori authority stops being Maori authority)**
In section RM 23(1), replace “sections RM 2 or RM 4 to RM 6” with “section RM 2, RM 4, or RM 5”. 25
- 54 Section RM 26 amended (Treatment of further income tax paid)**
In section RM 26(1), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.

55 Section RM 28 amended (Limits on refunds for PCA persons)

In section RM 28(1), replace “RM 2 and RM 4 to RM 6” with “RM 2, RM 4, and RM 5”.

56 Section RM 33 amended (Limits on refunds for certain unit trusts and group investment funds) 5

In section RM 33(1)(a), replace “sections RM 2 or RM 4 to RM 6” with “section RM 2, RM 4, or RM 5”.

57 Section YA 1 amended (Definitions)

(1A) Repeal the definition of accident compensation payment for attendant care. 10

(1) In the definition of **asset**, after paragraph (a), insert:

“(ab) is defined in **section DG 3** (Meaning of asset for this subpart) for the purposes of **subpart DG** (Expenditure related to use of certain assets) and **sections CC 1(2B) and CW 8B** (which relate to the treatment of certain income):” 15

(1B) In the definition of asset, in paragraph (b), replace “mining” with “mining:”, and insert:

“(c) is defined in **section EZ 68** (Definitions) for the purposes of **sections EZ 64 to EZ 67** (which relate to New Zealand Railways Corporation restructure)” 20

(2) Insert, in appropriate alphabetical order:

“**asset value** is defined in **section DG 11(8)(a)** (Expenditure limitation rule) for the purposes of **subpart DG** (Expenditure related to use of certain assets)” 25

(3) Insert, in appropriate alphabetical order:

“**Australian non-attributing shares** is defined in **section EM 8** (Some definitions) for the purposes of **subpart EM** (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)” 30

(4) Replace the definition of **bonus issue** with:

“**bonus issue** means the issue or subdivision of shares in a company, or the giving of credit for or forgiveness of an amount unpaid on any shares in a company, if the company receives no consideration for the issue, subdivision, crediting, 35

or forgiveness other than the shareholder choosing not to receive an amount as an alternative to the issue or subdivision”.

- (5) Replace the definition of **bonus issue** with:

“**bonus issue** means—

“(a) the issue or subdivision of shares in a company, or the giving of credit for or forgiveness of an amount unpaid on any shares in a company, if the company receives no consideration for the issue, subdivision, crediting, or forgiveness other than the shareholder choosing not to receive an amount as an alternative to the issue or subdivision: 5
10

“(b) the issue of shares under a profit distribution plan”.

- (5B) In the definition of **capital contribution**, replace paragraph (a)(iii) with:

“(iii) is not income of the recipient, ignoring sections **CC 1B** and **CG 8**; and” 15

- (6) Replace the definition of **capital contribution**, paragraph (a)(iv) with:

“(iv) is paid, under the express terms and conditions of the agreement, as a contribution for capital contribution property; and” 20

- (7) Insert, in appropriate alphabetical order:

“**capital contribution property** means, for a recipient of an amount,—

“(a) depreciable property owned or to be acquired by the recipient: 25

“(b) an improvement for which expenditure is or would be deductible for the recipient under section DO 4, **DO 11**, DO 12, or DO 13 (which relate to farming, horticultural, aquacultural, and forestry improvements): 30

“(c) a listed horticultural plant or land for which expenditure is or would be deductible for the recipient under section DO 5 or DO 6 (which relate to horticultural expenditure on land):

“(d) a listed horticultural plant or land to the extent to which some but not all expenditure for replacement plants is deductible under section DO 6” 35

- (8) Insert, in appropriate alphabetical order:

- “**class closing animal balance** is defined in **section EC 8(4)** (Restrictions on use of herd scheme) for the purposes of that section”.
- (9) In the definition of **cost**, before paragraph (a), insert:
“**(aa)** is defined in **section DG 3(4)** (Meaning of asset for this subpart) for the purposes of **subpart DG** (Expenditure related to use of certain assets):”.
- (10) Insert, in appropriate alphabetical order:
“**debt value** is defined in **section DG 11(8)(b)(9)** (Expenditure limitation rule) for the purposes of **subpart DG** (Expenditure related to use of certain assets)”.
- (11) Insert, in appropriate alphabetical order:
“**descendant** is defined in **section EC 4B(67)** (Compulsory use of herd scheme method for associated persons) for the purposes of that section”.
- (12) Insert, in appropriate alphabetical order:
“**descended associate** is defined in **section EC 4B(67)** (Compulsory use of herd scheme method for associated persons) for the purposes of that section”.
- (13) Repeal the definition of **development investments**.
- (14) Insert, in appropriate alphabetical order:
“**eligible hedge** is defined in **section EM 8** (Some definitions) for the purposes of **subpart EM** (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)”.
- (15) Insert, in appropriate alphabetical order:
“**fair dividend rate hedge portion** is defined in **section EM 8** (Some definitions) for the purposes of **subpart EM** (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)”.
- (16) In the definition of **FDP rules**, repeal paragraph (d).
- (17) Insert, in appropriate alphabetical order:
“**hedge** and **hedging** are defined in **section EM 8** (Some definitions) for the purposes of **subpart EM** (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)”.
- (18) Insert, in appropriate alphabetical order:

- “**interest expenditure** is defined in **section DG 5** (Meaning of interest expenditure for this subpart) for the purposes of **subpart DG** (Expenditure related to use of certain assets)”.
- (19) Replace the definition of **investor interest** with:
- “**investor interest**,— 5
- “(a) for an investor in a portfolio investment entity, means an interest in the entity that gives the holder an entitlement to a distribution of proceeds from the entity’s investments:
- “(b) is defined in **section EM 8** (Some definitions) for the purposes of **subpart EM** (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)” 10
- (19B) In the definition of **land provisions**, after paragraph (b), insert: 15
- “(bb) **section EI 4B** (Consideration for agreement to grant, renew, extend, or transfer leasehold estate or licence):”.
- (19C) Insert, in appropriate alphabetical order:
- “**legal and equitable rights** is defined in **section EZ 68** (Definitions) for the purposes of **sections EZ 64 to EZ 67** (which relate to New Zealand Railways Corporation restructure)” 20
- (19D) Insert, in appropriate alphabetical order:
- “**liabilities** is defined in **section EZ 68** (Definitions) for the purposes of **sections EZ 64 to EZ 67** (which relate to New Zealand Railways Corporation restructure)” 25
- (20) In the definition of **market value**, after paragraph (b), insert:
- “(bb) is defined in ~~**section DG 4** (Meaning of private use for this subpart)~~**section DG 3(4)** (Meaning of asset for this subpart) for the purposes of **subpart DG** (Expenditure related to use of certain assets):” 30
- (20B) Insert, in appropriate alphabetical order:
- “**net asset balance** is defined in **section DG 11(7)** for the purposes of subpart DG (Expenditure related to use of certain assets)”.
- (21) In the definition of **New Zealand superannuation**, in paragraph (b), repeal subparagraphs (ii) and (iii). 35

- (22) In the definition of **New Zealand superannuitant**, in paragraph (b), repeal subparagraph (ii).
- (22B) In the definition of **non-refundable tax credit**, after paragraph (f), insert:
- “(fb) a tax credit under sections LS 2, LS 3(2), and LS 4(2) (which relate to multi-rate PIEs and certain of their investors), if the person having the tax credit is a natural person not having the tax credit as a beneficiary of a trust.” 5
- (22C) In the definition of **non-refundable tax credit**, paragraph (g), delete “(which relate to multi-rate PIEs and certain of their investors)”. 10
- (23) Repeal the definition of **non-resident investment company**.
- (23B) In the definition of **ownership interest**, replace “sections YC 18B” with “sections YC 18B, **YC 18C**”. 15
- (24) Replace the definition of **private use** with:
- “**private use**—
- “(a) for a motor vehicle, is defined in section CX 36 (Meaning of private use):
- “(b) for the purposes of **subpart DG** (Expenditure related to use of certain assets), is defined in **section DG 4** (Meaning of private use for this subpart)”.
- (25) Insert, in appropriate alphabetical order:
- “**quarterly FDR hedging ratio** is defined in **section EM 8** (Some definitions) for the purposes of **subpart EM** (Hedging of currency movements in Australian non-attributing shares and attributing FDR method interests)”.
- (25B) Insert, in appropriate alphabetical order:
- “**Railways assets** is defined in **section EZ 68** (Definitions) for the purposes of **sections EZ 64 to EZ 67** (which relate to New Zealand Railways Corporation restructure)”. 30
- (25C) Insert, in appropriate alphabetical order:
- “**Railways assets and liabilities** is defined in **section EZ 68** (Definitions) for the purposes of **sections EZ 64 to EZ 67** (which relate to New Zealand Railways Corporation restructure)”. 35
- (25D) Insert, in appropriate alphabetical order:

“Railways liabilities is defined in **section EZ 68** (Definitions) for the purposes of **sections EZ 64 to EZ 67** (which relate to New Zealand Railways Corporation restructure)”.

(25E) Insert, in appropriate alphabetical order:

“**Railways vesting** is defined in **section EZ 68** (Definitions) for the purposes of **sections CW 65, EZ 64 to EZ 67, and YC 18C** (which relate to the New Zealand Railways Corporation restructure)”.

(25F) In the definition of **refundable tax credit**, paragraph (d), after “investors”, insert “, if the person with the tax credit is not a natural person or is a natural person having the tax credit as a beneficiary of a trust”.

(26) In the definition of **significant capital activity**, “land, except trees” is replaced by “land”.

(27) Replace the definition of **veteran’s pension** with:
“**veteran’s pension** means a veteran’s pension, other than a portable veteran’s pension, paid or payable under Part 6 of the War Pensions Act 1954”.

(28) **Subsection (4)** applies for the 2008–09 and later tax years.

(29) **Subsection (16)** applies for the 2008–09 and later income years.

(30) **Subsections (6), (7), and (26)** apply for the 2011–12 and later income years.

(31) **Subsections (1), (2), (3), (9), (10), (13), (14), (15), (17), (18), (19), (20), (23), (24), and (25) and (24)** apply for the 2013–14 and later income years for an item of property referred to in **section DG 3(2)(a)(i)**. **Subsections (1), (2), (10), (18), (20), (20C), and (24)** applies for the 2014–15 and later income years for an item of property referred to in **section DG 3(2)(a)(ii) and (iii)**.

(32) **Subsections (13) and (23)** apply for the 2013–14 and later income years.

57B Section YB 11 amended (Trustee and person with power of appointment or removal)

(1) Replace section YB 11, other than the heading and list of defined terms, with:

- “Association
- “(1) A trustee of a trust and a person who has a power of appointment or of removal of the trustee are associated persons.
- “Exclusion
- “(2) This section does not apply if the person— 5
- “(a) holds the power as a provider of professional services; and
- “(b) is a member of an approved organisation, as that term is defined in section 3(1) of the Tax Administration Act 1994, for such providers of professional services; and 10
- “(c) has not benefited from the trust; and
- “(d) is not eligible to benefit from the trust.”
- (2) **Subsection (1)** applies for the purposes of—
- (a) provisions other than the land provisions, for the 2010–11 and later income years; 15
- (b) the land provisions other than section CB 11, for land acquired on or after 6 October 2009;
- (c) section CB 11, for land on which improvements are begun on or after 6 October 2009.
- 57C Section YB 14 amended (Tripartite relationship)** 20
- (1) After section YB 14(3), insert:
- “Applying test to limited partnership
- “(4) For the purpose of applying subsection (1), a limited partnership is treated as being a company.”
- (2) In section YB 14, list of defined terms, insert “limited partnership”. 25
- (3) **Subsection (1)** applies for the purposes of—
- (a) provisions other than the land provisions, for the 2010–11 and later income years;
- (b) the land provisions other than section CB 11, for land 30
- acquired on or after 6 October 2009;
- (c) section CB 11, for land on which improvements are begun on or after 6 October 2009.
- 57D New section YC 18C inserted (Railways restructure not affecting Crown economic ownership)** 35
- After section YC 18B, insert:

“YC 18C Railways restructure not affecting Crown economic ownership

“When this section applies

“(1) This section applies for New Zealand Railways Corporation, KiwiRail Holdings Limited, and any company that, immediately after the Railways vesting, is in the same wholly-owned group as KiwiRail Holdings Limited for the purposes of the tests of ownership and control in: 5

“(a) Parts I and O (which relate to losses and memorandum accounts): 10

“(b) the consolidation rules:

“(c) the amalgamation rules.

“Loss balance, credit account, and restructuring continuity

“(2) Starting from when New Zealand Railways Corporation is first treated as having a notional single person under section YC 5, KiwiRail Holdings Limited is treated as— 15

“(a) existing and having the same notional single person under section YC 5 that KiwiRail Holdings Limited has immediately after the Railways vesting:

“(b) holding the ownership interests in other companies that New Zealand Railways Corporation held before the Railways vesting. 20

“No notice requirement for joining consolidated group

“(3) KiwiRail Holdings Limited may choose to join an existing consolidated group on and after 31 December 2012, despite section FM 38 (Notice requirements on forming or joining consolidated group). 25

“Effect of subsection (2)

“(4) **Subsection (2) does not prevent a change in shareholders, notional single person, the holdings of ownership interests, or other circumstances occurring after the Railways vesting.** 30

“Definitions

“(5) In this section,—

“ownership interest has the same meaning as in section YC 18(6) 35

- “Railways vesting has the same meaning as in section EZ 68 (Definitions).**
“Defined in this Act: amalgamation rules, consolidation rules, consolidated group, ownership interest, Railways vesting, shareholder, wholly-owned group.” 5
- 58 Schedule 3 amended (Payment of provisional tax and terminal tax) amended**
- (1) In schedule 3, in the shoulder references, insert, in appropriate alphanumeric order, “RC 9”.
- (2) **Subsection (1)** applies for the 2008–09 income year and later income years. 10
- 59 Schedule 17 amended (Types and classes of livestock)**
- (1) In schedule 17, column 2,—
- (a) replace “*Friesian and related breeds*” with “*Friesian and related breeds, Jersey, and other dairy breeds*”; and 15
- (b) delete “*Jersey and other dairy breeds*” and the 6 items that follow that heading; and
- (c) delete “*Red deer*” and the 6 items that follow that heading; and
- (d) replace “*Wapiti, elk, and related crossbreeds*” with “*Red deer, wapiti, elk, and related crossbreeds*”. 20
- (2) **Subsection (1)** applies for the ~~2013–14~~2014–15 and later income years. For the purposes of section EC 8(3), subsection (1) applies for the 2012–13 and later income years.
- 60 Schedule 20 amended (Expenditure on farming, horticultural, aquacultural, and forestry improvements)** 25
- (1) In schedule 20, parts A to G, column 3,—
- (a) replace “6” with “5” in each place where it appears;
- (b) replace “12” with “10” in each place where it appears;
- (c) replace “24” with “20” in each place where it appears. 30
- (2) **Subsection (1)** applies for a person and a listed horticultural plant that the person acquires or plants after the date of introduction of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill (the **introduction date**), except if the person— 35

- (a) decides, on or before the introduction date, to purchase or plant the listed horticultural plant; and
 - (b) on or before the introduction date,—
 - (i) enters a binding contract for the purchase or planting of the listed horticultural plant; 5
 - (ii) after deciding to purchase or plant the listed horticultural plant, incurs expenditure in relation to the purchase or planting; and
 - (c) for the person’s decision to purchase or plant the listed horticultural plant,— 10
 - (i) has available, for the Commissioner, documents dated on or before the introduction date that evidence that the person made the decision on or before the introduction date;
 - (ii) sends to the Commissioner a statutory declaration that the person made the decision on or before the introduction date. 15
- (2) **Subsection (1)** applies for the 2013–14 and later income years.
- 61 Schedule 32 amended (Recipients of charitable or other public benefit gifts) 20**
- (1) In schedule 32, insert, in appropriate alphabetical order, “Fund for Timor”, “OneSight New Zealand”, and “The Hunger Project New Zealand”.
 - (2) **Subsection (1)** applies for the 2013–14 and later income years. 25

Part 2

Amendments to other Acts

Amendments to Tax Administration Act 1994

- 62 Tax Administration Act 1994 30**
Sections 63 to 72 amend the Tax Administration Act 1994.
- 63 Section 2 amended (Purpose of Act)**
Repeal section 2(4).

64 Section 16 amended (Commissioner may access premises to obtain information)

- (1) In section 16(2), replace “section 103(3)(b)(ii)” with “sections 103(3)(b)(ii) and 103(7)”.
- (2) In section 16(6A), replace “sections 118” with “sections 102, 103(3)(b)(ii), 103(7), 115(1)(b), 118”.

65 Section 16C amended (Power to remove and retain documents for inspection)

In section 16C(8), replace “sections 118” with “sections 102, 103(3)(b)(ii), 103(7), 115(1)(b), 118”.

10

66 New section 30D inserted (Statements to shareholders when certain assets held by companies)

After section 30C, insert:

“30D Statements to shareholders when certain assets held by companies

15

“(1) This section applies for an income year to a company to which 1 or more of **sections DG 11 to DG 19** of the Income Tax Act 2007 applies.

“(2) The company must provide the following information, as applicable, to every shareholder of the company for the income year to enable the shareholder to calculate the amount of a deduction that may be allowed for the income year in relation to an asset to which **subpart DG** of that Act applies:

20

“(a) their share of a net asset balance for the income year:

“(b) their share of an outstanding profit balance for the income year:

25

“(c) other necessary information for the income year.”

66B Section 31C amended (Notification requirements for multi-rate PIEs)

After section 31C(8), insert:

30

“(9) A notice required by this section may be given electronically to—

“(a) the investor, if the investor agrees to have the notice given in that way:

“(b) a person authorised to act on behalf of the investor, if the person and the investor agree to have the notice given in that way.”

67 Section 41A amended (Returns by persons with tax credits for charitable or other public benefit gifts) 5

(1) Replace section 41A(6) with:

“(6) A taxpayer may apply for a refund for a tax year in the 4-year period beginning with—

“(a) the 1 April following the end of the taxpayer’s income year corresponding to the tax year, if the taxpayer has a standard balance date or an early balance date; or 10

“(b) the day after the end of the taxpayer’s income year corresponding to the tax year, if the taxpayer has a late balance date.”

(2) **Subsection (1)** applies for the 2013–14 and later tax years. 15

67 Section 41A amended (Returns by persons with tax credits for charitable or other public benefit gifts)

(1) Replace section 41A(6) with:

“(6) A taxpayer may apply for a refund for the tax year in which the gift is made in the 4-year period beginning with— 20

“(a) the 1 April following the end of the taxpayer’s income year corresponding to the tax year, if the taxpayer has a standard balance date or an earlier balance date; or

“(b) the day after the end of the taxpayer’s income year corresponding to the tax year, if the taxpayer has a late balance date.” 25

(2) **Subsection (1)** applies to applications made in the 2014–15 and later tax years.

67B Section 91C amended (Taxation laws in respect of which binding rulings may be made) 30

(1) In section 91C(1)(f), in the words before the subparagraphs, replace “(a) to (eb)” with “(a) to (ec)”.

(2) In section 91C(1)(f)(i), replace “(e) or (eb)” with “(e), (eb), or (ec)”.

- 68 Section 120C amended (Definitions)**
In section 120C(1), in the definition of **date interest starts**, paragraph (c), replace “a GST refund” with “a GST refund, other than a refund for a registered person who is a non-resident non-resident person who is registered under **section 54B of the Goods and Services Tax Act 1985**.” 5
- 69 Section 125 amended (Certain rights of objection not conferred)**
In section 125(j)(iii), delete “RM 6.”
- 70 Section 138E amended (Certain rights of challenge not conferred)** 10
In section 138E(1)(e)(iii), delete “RM 6.”
- 71 Section 140C amended (Transitional imputation penalty tax payable in some circumstances)**
After section 140C(5), insert: 15
- “(6) Despite subsection (4), the company is not liable for imputation penalty tax unless it pays a dividend with imputation credits attached—
- “(a) when the imputation ratio is greater than 28/72; and
“(b) after the earlier of— 20
- “(i) the date on which the company’s return of income for the 2010–11 tax year is filed;
“(ii) 31 March 2012.”
- 71 Section 140C repealed (Transitional imputation penalty tax payable in some circumstances)** 25
Repeal section 140C.
- 72 Section 184 amended (Refund of tax paid on income subsequently exempted by Order in Council)**
In section 184, replace “RM 4 to RM 6” with “RM 4, RM 5”.

*Amendments to Goods and Services Tax Act
1985*

- 73 Goods and Services Tax Act 1985**
Sections 74 to 95 amend the Goods and Services Tax Act 1985. 5
- 74 Section 2 amended (Interpretation)**
- (1) In section 2(1), insert, in appropriate alphabetical order:
 “**prize competition** means a scheme or competition—
 “(a) ~~for which direct or indirect consideration is paid to participate; and~~ 10
 “(a) for which direct or indirect consideration is paid to a person for conducting the scheme or competition; and
 “(b) that distributes prizes of money or in which participants seek to win money; and
 “(c) for which the result is determined— 15
 “(i) by the performance of the participant of an activity of a kind that may be performed more readily by a participant possessing or exercising some knowledge or skill; or
 “(ii) partly by chance and partly by the performance 20
 of an activity as described in **subparagraph (i)**, whether or not it may also be performed successfully by chance.”.
- (2) In section 2(1), insert, in appropriate alphabetical order:
 “**Railways assets and liabilities, Railways assets, and Railways liabilities** have the same meaning as in **section EZ 68** of the Income Tax Act 2007”. 25
- (3) In section 2(1), insert, in appropriate alphabetical order:
 “**Railways vesting** has the same meaning as in **section EZ 68** of the Income Tax Act 2007”. 30
- 75 Section 5 amended (Meaning of term supply)**
- (1) Before section 5(4), insert:
 “(3B) For the purposes of this Act, when a person who is a non-resident ceases to be a registered person,—
 “(a) any goods that are part of the assets of the taxable activity carried on by the person that are present in New 35

Zealand at the time the person ceases to be registered are treated as supplied by the person in the course of the taxable activity at a time immediately before the person ceases to be registered:

“(b) any services that would be ~~supplied~~performed in New Zealand as part of the taxable activity carried on by the person at the time the person ceases to be registered are treated as ~~supplied~~performed by the person in the course of the taxable activity at a time immediately before the person ceases to be registered.” 5 10

(2) Replace section 5(10) with:

“(10) For the purposes of this Act, an amount of money paid by a person to participate in gambling (including a New Zealand lottery) or in a prize competition is treated as a payment for a supply of services by the following: 15

“(a) for gambling, by the person, society, licensed promoter, or organiser who under the Gambling Act 2003 conducts the gambling:

“(b) for a prize competition, by the person who conducts the prize competition.” 20

76 Section 9 amended (Time of supply)

Replace section 9(2)(e) with:

“(e) if the supply is made under section 5(10),—

“(i) for an amount of money paid by a person to participate in gambling (including a New Zealand lottery), on the date on which the first drawing or determination of a result commences, but this subparagraph does not apply to an ~~instant game played~~ instant game that is a New Zealand lottery or gambling played by means of a gaming machine as defined in section 4(1) of the Gambling Act 2003: 25 30

“(ii) for an amount of money paid by a person to participate in a prize competition on the date on which the first drawing or determination of the prize competition commences:” 35

77 Section 10 amended (Value of supply of goods or services)

(1) In section 10(3), replace “(3D)” with “(3D); **(3DB)**”.

(2) After section 10(3D), insert:

“(3DB) Subsection (3) does not apply when a person uses an asset described in **section DG 3** of the Income Tax Act 2007 for making taxable supplies.” 5

(3) Replace section 10(14) with:

“(14) If a supply of services is treated as having been made under **section 5(10)**, the consideration for the supply is calculated using the formula— 10

amounts received – prizes

“where—

“(a) **amounts received** is the total of all amounts in money received in relation to the supply—

“(i) for gambling, by the person, society, licensed promoter, or organiser who under the Gambling Act 2003 conducts the gambling: 15

“(ii) for a prize competition, by the person who conducts the prize competition:

“(b) **prizes** is the total amount of all prizes paid and payable in money in relation to the supply.” 20

(4) **Subsections (1) and (2)** apply for taxable periods starting on or after 1 April 2013.

77B Section 10 amended (Value of supply of goods and services)

In section 10(7A), replace “section 5(3)” with “section 5(3) and **(3B)**”. 25

78 Section 11 amended (Zero-rating of goods)

In section 11(1)(o)(ii), replace “section 11A(1)(s) or (t).” with “section 11A(1)(s) or (t); or” and insert:

“(p) the goods are— 30

“(i) jigs, patterns, templates, dies, punches, and similar machine tools to be used in New Zealand solely to manufacture goods that will be for export from New Zealand; and

“(ii) supplied to a recipient who is a non-resident, and is not registered.”

79 Section 19 amended (Accounting basis)

After section 19(1), insert:

“(1B) Despite subsection (1), if the Commissioner registers a non-resident person under **section 54B**, the person must account for tax payable on a payments basis for the purpose of section 20.” 5

80 Section 19A amended (Requirements for accounting on payments basis) 10

(1) Repeal section 19A(1)(a)(ii).

(2) After section 19A(1)(iii), insert:

“(iv) a non-resident; or”.

81 Section 19AB repealed (Local authorities accounting on payments basis on and after 1 July 2001) 15

Repeal section 19AB.

82 Section 19C amended (Tax payable, or refund, where change in accounting basis)

In section 19C(1), replace “section 19 or section 19A” with “section 19, 19A, or **87**, as applicable,”. 20

83 Section 20 amended (Calculation of tax payable)

(1) After section 20(3)(h), insert:

“(hb) an amount calculated in accordance with **section 20G** in relation to the supply of an asset during the taxable period.”. 25

(2) In section 20(3C), replace “Subsection (3D) overrides” with “Subsections (3D) and **(3L)** override”.

(3) In section 20(3J)(b), replace “sections 21 to 21H” with “**sections 20G** and 21 to 21H”.

(4) After section 20(3J), insert: 30

“(3JB) For a supply to which **section 20G** applies, the recipient must,—

- “(a) on acquisition,—
- “(i) identify the nominal amount of tax that would be chargeable on the value of the supply, as if the value were equal to the consideration charged for the supply, at the rate set out in section 8(1): 5
- “(ii) determine the extent to which they intend to use the goods, as described in subsection (3G); and
- “(iii) account for input tax for the amount calculated under subsection (3G) and (3H); and
- “(b) make adjustments under **section 20G(4) and (5)** in relation to the taxable supply referred to in **paragraph (a)**.” 10
- (5) In section 20(3K), replace “a non-profit body” with “a non-profit body that is resident in New Zealand”.
- (6) After section 20(3K), insert: 15
- “(3L) For the purposes of subsection (3), ~~for a registered person who is non-resident~~for a non-resident person who is registered under **section 54B**, input tax 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, treating all the supplies 20
made by the person as if they were made and received in New Zealand.
- “(3M) Despite **subsection (3L)**, a non-resident person who is registered under **section 54B** and who principally makes supplies of financial services may, for the purposes of calculating the amount of input tax, choose to use a fair and reasonable method of apportionment agreed with the Commissioner, as set out in subsection (3E).” 25
- (7) ~~**Subsections (1), (3), and (4)** apply for taxable periods starting on or after 1 April 2013.~~**Subsections (1), (3), and (4)** apply in relation to supplies of goods other than land or improvements to land made on or after 1 April 2014. For supplies of land or improvements to land, **subsections (1), (3), and (4)** apply from the date on which this Act receives the Royal assent. 30
35

84 New section 20G inserted (Treatment of supplies of certain assets)

(1) After section 20F, insert:

“20G Treatment of supplies of certain assets

“(1) A registered person who uses an asset described in **section DG 3** of the Income Tax Act 2007 for making taxable supplies has a deduction under **section 20(3)(hb)** of an amount calculated using the formula—

$$\text{input tax for asset} \times \frac{\text{total income-earning days}}{\text{total income-earning days} + \text{total private days}}$$

“(2) In the formula,—

“(a) **input tax for asset** is the input tax on expenditure that the person incurs in relation to the use of the asset, other than expenditure that is—

“(i) related solely to the income-earning use of the asset as described in **section DG 7** of that Act; or

“(ii) related solely to the private use of the asset, as that term is defined in **section DG 4** of that Act:

“(b) **total income-earning days** is the total number of days in the period on which the person supplies the asset when the consideration for the supply is at or above market value, as that term is defined in **section DG 4(2)** of that Act, including any days on which the use made of the asset is use described in **section DG 4(3)** of that Act:

“(b) total income-earning days is the total number of days in the period on which the person supplies the asset for use and derives consideration for the supply, whether at, above, or below market value as that term is defined in **section DG 3(5)** of that Act, including any days on which—

“(i) the use made of the asset is used described in section DG 4(3) to (5) of that Act:

“(ii) the asset has become unavailable for use because another person who had earlier reserved the asset for their own use, subsequently did not take advantage of that reservation:

- “(iii) a fringe benefit tax liability arises:
- “(c) **total private days** is the total number of days in the period on which the asset is in active use as described in **section DG 3(37)** of that Act and the day is not an income-earning day as described in **paragraph (b)**. 5
- “(3) A unit of measurement of time other than days, whether relating to hours, or nights, or anything else is to be used in the formula and in **subsection (2)(b) and (c)**, if the use of the unit provides a fair and reasonable result. For this purpose, the same unit must be used in relation to both total income-earning days and total private days. 10
- “(4) The person must ascertain at the end of an adjustment period whether an adjustment is required to be made for any percentage difference in a supply of the asset for the period in relation to the actual use of the asset for making taxable supplies. 15
- “(5) If an adjustment is required, the person must, at the end of the adjustment period,—
- “(a) identify the percentage actual use of the asset in accordance with the formula in **subsection (1)** for making taxable supplies; and 20
- “(b) compare the percentage actual use with percentage intended use as described in **section 20(3JB)** or previous actual use, as applicable; and
- “(c) if a percentage difference arises, make an adjustment for any percentage difference for the adjustment period, applying section 21D(3) to the resulting amount. 25
- “(6) For the purposes of **subsection (5)**, all expenditure incurred in relation to the use of the asset is aggregated and included in the relevant adjustment unless section 21(2)(c) or (d) applies to the aggregated amount. 30
- “(7) Sections 8 and 21F apply to the disposal of the asset, treating the disposal as in the course or furtherance of a taxable activity.
- “(8) For the purposes of this section, a registered person does not include a widely-held company, as that term is defined in section YA 1 of the Income Tax Act 2007.” 35
- (2) **Subsection (1)** applies for taxable periods starting on or after 1 April 2013. **Subsection (1)** applies in relation to supplies of goods other than land or improvements to land made on or

provements to land made on or after 1 April 2014. For supplies of land or improvements to land, **subsections (1), (2), and (3)** apply from the date on which this Act receives the Royal assent.

- 88 Section 26 amended (Bad debts)** 5
After section 26(2), insert:
“(3) This section does not apply when the taxable supply is one made by a principal to an agent as described in **section 60(1B)(a)** if the agent has been paid for the supply described in **section 60(1B)(b)**.” 10
- 89 Section 46 amended (Commissioner’s right to withhold payments)**
After section 46(1), insert:
“(1B) For the purposes of subsections (1)(a), (4)(a), and (5), when a registered person is non-resident, the reference to a 15-day period is treated as a reference to a 90-day period following the day on which the registered person’s return was received by the Commissioner.” 15
- 89B Section 51 amended (Persons making supplies in course of taxable activity to be registered)** 20
In section 51(4)(a), replace “or subsection (3) of this section” with “, (3), or **section 54B**”.
- 89C Section 51B amended (Persons treated as registered)**
After section 51B(1)(c), insert—
“(d) a non-resident person referred to in **section 54B(2)**.” 25
- 89D Section 51B amended (Registered person to notify change of status)**
In section 53(1)(c), delete “, if in category C,”.
- 90 Section 52 amended (Cancellation of registration)**
~~Repeat section 52(7)~~In section 52(7), replace “for a person who is a non-resident” with “for a non-resident person who is not registered under **section 54B**”. 30

91 New sections 54B and 54C inserted

After section 54, insert:

“54B Non-residents: registration

“(1) Despite section 51(3), the Commissioner may register a person who is a non-resident and has not become liable to be registered under section 51(1) only if the Commissioner is satisfied that the person meets the following requirements: 5

“(a) the person—

“(i) is registered for a consumption tax in the country or territory in which they are resident; or 10

“(ii) if the country or territory in which the person is resident does not have a consumption tax, is carrying on a taxable activity, and has a level of taxable activity in a country or territory that would render them liable to be registered under section 51(1) if they were carrying out the taxable activity in New Zealand; and 15

“(b) the amount of the person’s input tax for the first taxable period after the date of registration in New Zealand is likely to be more than \$500; and 20

“(c) the person’s taxable activity does not involve a supply of services in relation to which it is reasonably foreseeable that the services will be received in New Zealand by a person who is not a registered person. 25

“(2) For timing purposes, when a person becomes resident or becomes non-resident,—

“(a) the day on which the person becomes resident is treated as the end of a taxable period:

“(b) the day on which the person becomes non-resident is treated as the end of a taxable period. 30

“54C Non-residents: cancellation of registration

“(1) Section 52 applies to the cancellation of registration of a non-resident person as modified by this section.

“(2) The Commissioner may, in addition to the powers provided under section 52(5) and (5A), cancel the person’s registration if— 35

“(a) the Commissioner is satisfied that the person no longer meets the requirements of **section 54B(1)(a)**:

- “(b) for 3 consecutive taxable periods, the person has either not filed a return or has filed a late return.
- “(3) When **subsection (2)(b)** applies and the person’s registration is cancelled,—
- “(a) the effective date of the cancellation is the first day of the third period referred to in **subsection (2)(b)**: 5
- “(b) the person may not apply to become a registered person again until a period of 5 years has expired, starting on the date of cancellation, and this exclusion period applies also to a non-resident associate of the person. 10
- “(4) The Commissioner may cancel the registration of a person if the person fails to satisfy the Commissioner that they meet the requirements described in **section 54B(1)**, and they are—
- “(a) a non-resident registered person who registers between **the day of introduction of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill** and † April 2014: 15
- “(b) a resident registered person who becomes non-resident.” 20
- “**54B Non-residents: registration** 20
- “(1) Despite section 51(3), the Commissioner may register a person who is a non-resident and has not become liable to be registered under section 51(1) if the Commissioner is satisfied that the person meets the following requirements:
- “(a) the person— 25
- “(i) is registered for a consumption tax in the country or territory in which they are resident; or
- “(ii) if the country or territory in which the person is resident does not have a consumption tax, or has a consumption tax that does not apply to the person’s activities, is carrying on a taxable activity, and has a level of taxable activity in a country or territory that would render them liable to be registered under section 51(1) if they were carrying out the taxable activity in New Zealand; and 30
- “(b) the amount of the person’s input tax for the first taxable period after the date of registration in New Zealand is likely to be more than \$500; and 35

- “(c) the person’s taxable activity does not involve a performance of services in relation to which it is reasonably foreseeable that the performance of the services will be received in New Zealand by a person who is not a registered person; and 5
- “(d) the person—
- “(i) is not carrying on a taxable activity in New Zealand, or intending to carry on a taxable activity in New Zealand; and
- “(ii) is not, and does not intend to become, a member of a group of companies that is carrying on a taxable activity in New Zealand. 10
- “(2) If a non-resident person who is registered under this section starts making taxable supplies, or becomes a member of a group of companies that is making taxable supplies, they are treated as registered on the date specified by the Commissioner under **subsection (1)**, and not being registered under this section from the date on which they start making taxable supplies or the date on which they join the group, as applicable. 15
- “(3) For timing purposes, the following days are treated as the end of a taxable period: 20
- “(a) the day on which a person ceases to be eligible to be registered under this section:
- “(b) the day on which a person who is otherwise registered becomes registered under this section. 25
- “54C Non-residents: cancellation of registration**
- “(1) Section 52 applies to the cancellation of registration of a non-resident person registered under **section 54B** as modified by this section.
- “(2) The Commissioner may, in addition to the powers provided under section 52(5) and (5A), cancel the person’s registration if— 30
- “(a) the Commissioner is satisfied that the person no longer meets the requirements of **section 54B(1)(a)**;
- “(b) for 3 consecutive taxable periods, the person has either not filed a return or has filed a late return. 35
- “(3) When a person’s registration is cancelled under **subsection (2)(b)**,—

“(a) the effective date of the cancellation is the first day of the third period:

“(b) the person may not apply to become a registered person again until a period of 5 years has expired, starting on the date of cancellation, and this exclusion period also applies to a non-resident associate of the person.” 5

92 Section 55 amended (Group of companies)

After section 55(1), insert:

“(1B) ~~Despite subsections (1) and (4)(a), a registered person~~ registered under **section 54B** may not apply to be a member of a group of companies or for a further company to be a member of a group of companies, if the resulting group would have both resident and non-resident persons as members.” 10

(2) After section 55(8), insert:

“(9) ~~As a transitional measure, if a group of companies formed after~~ **the day of introduction of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill** has as a member a registered person who is a non-resident, the representative member must apply under subsection (4) for an alteration to the group to exclude the non-resident member of the group. Alternatively, the representative member may similarly apply to exclude a resident member of the group, so that no group of companies exists that has both resident and non-resident persons as members of the same group.” 15

“(10) ~~If, despite **subsection (9)**, a group of companies continues to exist with both resident and non-resident persons as members, the Commissioner may—~~” 25

“(a) ~~treat the group as consisting only of those members who are resident; and~~

“(b) ~~notify the non-resident member or the representative member that the membership of the non-resident person is terminated from a specified date.”~~” 30

93 Section 60 amended (Agents and auctioneers)

After section 60(1), insert:

“(1B) ~~Despite subsection (1), when a principal and their agent are both registered persons and agree in writing that this subsec-~~” 35

- tion applies to a supply of goods and services, the supply is treated for the purposes of the Act as 2 separate supplies, being:
- “(a) a supply of goods and services from the principal to the agent; and 5
 - “(b) a supply of those goods and services from the agent to the recipient, treating the agent as if they were the principal for the purpose of the supply.
- “(1C) For a supply to which **subsection (1B)** applies, if the principal accounts for tax payable on a payments basis, they are liable to account for tax payable on the supply referred to in **subsection (1B)(a)** as if they accounted for tax payable on an invoice basis.” 10
- “(1B) Despite subsection (1), when a principal and their agent agree in writing, either in relation to a particular supply or for a type of supply, that this subsection applies to a supply of goods or services, the supply is treated for the purposes of the Act as 2 separate supplies, being: 15
- “(a) a supply of goods and services from the principal to the agent; and 20
 - “(b) a supply of those goods and services from the agent to the recipient, treating the agent as if they were the principal for the purpose of the supply.”
- 94 Section 75 amended (Keeping of records)**
- (1) Replace section 75(3) with: 25
 - “(3) Subject to subsections (4) to (7), every registered person must keep, for a period of at least 7 years after the end of the taxable period to which they relate, the records listed in subsection (2) and records that are sufficient to enable ready ascertainment by the Commissioner or an officer authorised by the Commissioner of the registered person’s liability to tax.” 30
 - (2) After section 75(3), insert:
 - “(3BA) A registered person required by **subsection (3)** to keep and retain a record must keep and retain the record— 35
 - “(a) in English, or in a language in which the Commissioner authorises the person under **subsection (6)** 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—
- “(i) the Commissioner authorises the registered person under **subsection (6)** to keep the record or the type of record: 5
- “(ii) the record is kept by a person authorised by the Commissioner under **subsection (6)** to keep records for persons that include the registered person.”
- (3) After section 75(5), insert: 10
- “(6) The Commissioner may, upon application in writing by a registered person or another person, authorise for the purposes of **subsection (3BA)**,—
- “(a) a registered person to keep and retain a record or a type of record— 15
- “(i) in a language other than English:
- “(ii) at a place outside New Zealand:
- “(b) a person to hold, for a registered person, records—
- “(i) at places outside New Zealand; and
- “(ii) in a form approved by the Commissioner; and 20
- “(iii) accessible by the Commissioner in a way approved by the Commissioner.
- “(7) The Commissioner may, for an authorisation under **subsection (6)** of a person,—
- “(a) impose reasonable conditions on the authorisation: 25
- “(b) reasonably vary the conditions on the authorisation:
- “(c) withdraw the authorisation, upon request by the person or after giving reasonable notice of the withdrawal:
- “(d) give public notice of an action under **subsection (6)(b)** or this subsection, in a publication chosen by the Commissioner.” 30

94B New section 78G inserted (Railways vesting: zero rating and timing of tax calculations and documents)

After section 78F, insert:

“78G Railways vesting: zero rating and timing of tax calculations and documents

- “(1) The Railways vesting is treated as being a taxable supply, on 31 December 2012, of the Railways assets and liabilities, that is charged with tax at the rate of 0%.** 5
- “(2) For the purpose of calculating the amount of tax payable, or input tax deductible, on or after 31 December 2012 by KiwiRail Holdings Limited in respect of, or in relation to, a Railways asset or a Railways liability, KiwiRail Holdings Limited and New Zealand Railways Corporation are treated as if they were the same person in respect of the period up to and including 31 December 2012, subject to **subsection (1)**.** 10
- “(3) If it is necessary for a tax invoice, a credit note, or a debit note (the **document**) to be issued by or to New Zealand Railways Corporation in respect of a supply made by or to New Zealand Railways Corporation on or before 31 December 2012, the document may be issued by or to KiwiRail Holdings Limited if the supply was in respect of or in relation to Railways assets and liabilities. New Zealand Railways Corporation and KiwiRail Holdings Limited are treated as if, in relation to that supply, they were the same person for the purposes of any requirement that New Zealand Railways Corporation holds, has previously been issued with, or has issued to a person, a tax invoice, a debit note, or a credit note for the supply.** 15
- “(4) If a document purporting to be a tax invoice, a credit note, or a debit note (the **issued document**) is issued by or to New Zealand Railways Corporation in respect of a supply that is made by or to KiwiRail Holdings Limited on or after 31 December 2012, the issued document is treated as if it is a tax invoice, a credit note, or a debit note, as appropriate, that is issued by or to KiwiRail Holdings Limited, if the supply is in respect of or in relation to Railways assets and liabilities.”** 25
30

95 New section 87 inserted (Change of accounting basis: transitional provision for certain local authorities)

After section 86, insert:

35

“87 Change of accounting basis: transitional provision for certain local authorities

- “(1) This section applies to a local authority referred to in the Goods and Services Tax (Local Authorities Accounting on Payments Basis) Order 2009. 5
- “(2) From 1 July 2013, the local authority must account for tax payable on an invoice basis.
- “(3) On the change of accounting basis, the local authority may spread the tax payable under section 19C(1) and calculated under section 19C(3) evenly over a period of 72 months commencing on 1 July 2013. If the full amount is not divisible into exactly equal instalments, the final instalment carries the difference. 10
- “(4) If a local authority changes their accounting basis before 1 July 2013, the amount of the tax payable must be calculated on the day before the date on which the change is to take effect, although the amount remains available to be paid as described in **subsection (3)**. 15
- “(5) No late payment penalty, shortfall penalty, or interest under Part 7 of the Tax Administration Act 1994 arises for the local authority as a result of its application of the spreading provision in **subsection (3)**, whether or not the authority incurs a tax liability because it changes its accounting basis before 1 July 2013.” 20

Amendment to KiwiSaver Act 2006 25

96 Section 4 amended (Interpretation)

- (1) In section 4 of the KiwiSaver Act 2006, in the definition of **salary or wages**, paragraph (a)(i), replace “(6)(b)” with “(6)(b) to (bd)”. 30
- (2) In section 4 of the KiwiSaver Act 2006, after the definition of **salary or wages**, paragraph (a)(i), insert: 35
- “(ia) a payment under a Voluntary Bonding Scheme that is funded by the Ministry for Primary Industries, the Ministry of Health, or the Ministry of Education; and”
- (3) In section 4 of the KiwiSaver Act 2006, in the definition of **salary or wages**, paragraph (b)(ii), replace “(as defined in sec-

tion YA 1 of the Income Tax Act 2007)” with “for the purposes
of the Income Tax Act 2007”.

Amendment to Student Loan Scheme Act 2011

- 97 Section 202 amended (Provisions of Tax Administration Act 1994 and Income Tax Act 2007 to apply to this Act)** 5
In section 202 of the Student Loan Scheme Act 2011, in the words before paragraph (a), replace “RM 2, RM 4, and RM 6” with “RM 2, and RM 4”.

Amendments to Stamp and Cheque Duties Act 1971

- 98 Section 86I amended (Application of approved issuer levy and zero-rating)** 10
In section 86I of the Stamp and Cheque Duties Act 1971, replace “Income Tax Act 2007 and section 86J of this Act” with “Income Tax Act 2007, an exemption under a double tax agreement, and section 86J of this Act”. 15

98B Section 86L amended (Refund of levy paid in error or in excess)

- (1)** In section 86L(1) of the Stamp and Cheque Duties Act 1971, replace “8 years” with “4 years”. 20
- (2)** **Subsection (1)** applies to refunds of levies paid on or after the date on which the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Act **2013** receives the Royal assent.

Amendments to Income Tax Act 2004 25

- 99 Income Tax Act 2004**
Sections 100 to 107 amend the Income Tax Act 2004.

100 New section CD 21BA inserted (Issues to shareholders of rights to subscribe for or sell back shares)

- (1)** After section CD 21, insert: 30

**“CD 21BA Issues to shareholders of rights to subscribe for or
sell back shares**

“Issue of rights to subscribe for shares

“(1) The issue by a company to a shareholder of a right to subscribe
for a share, or to sell a share in the company to the company, 5
is not a dividend.

“Issue of shares under rights to subscribe for shares

“(2) The issue by a company of a share to a person for consideration
less than the market value, immediately before the issue, of a
share in the same class of shares, is not a dividend if— 10

“(a) the person subscribes for the share under a right (a **sub-
scription right**) issued by the company to a shareholder
holding shares in the share class before the issue of the
right; and

“(b) the company does not, as part of the issue of the sub- 15
scription right, give the person a right to dispose of the
share to the company.

“Premiums from issue of rights to subscribe for shares

~~“(3) A distribution by a company to a shareholder is not a dividend
if— 20~~

~~“(a) the company issues to the shareholder a right (the **sub-
scription right**) to subscribe for a share at a given price
(the **subscription price**); and~~

~~“(b) the shareholder fails or is ineligible to exercise the sub- 25
scription right; and~~

~~“(c) another person subscribes for the share corresponding
to the subscription right at a price (the **clearing price**)
of more than the subscription price; and~~

~~“(d) the distribution to the shareholder represents all or part
of the difference between the clearing price and the sub- 30
scription price.~~

“(3) A distribution by a company to a shareholder is not a dividend
if—

“(a) the company issues to the shareholder a right (the **share-
holder right**) to subscribe for, or dispose of to the com- 35
pany, a share in the company at a given price (the **share-
holder price**); and

- “(b) the shareholder fails or is ineligible to exercise the shareholder right; and
- “(c) another person pays to the company an amount—
 “(i) for the shareholder right;
 “(ii) greater than the shareholder price, for the issue of a share under the shareholder right; and 5
- “(d) the distribution is from the amount of the payment that does not increase the company’s available subscribed capital.
- “Defined in this Act: available subscribed capital, bonus issue in lieu, company, consideration, dividend, share, shareholder” . 10
- (2) **Subsection (1)** applies for the 2005–06 and later tax years.
- 101 Section CR 3 amended (Income for general insurance outstanding claims reserve)**
- (1) After section CR 3(1), insert: 15
 “When this section does not apply
- “(1B) This section does not apply for contracts that section DZ 10 (General insurance with risk period straddling 1 July 1993) applies to.”
- (2) **Subsection (1)** applies for the 2005–06 and later income 20 years.
- 102 Section CW 25 replaced (Services for members of Parliament)**
- (1) Replace section CW 25 with: 25
 “CW 25 Services for members of Parliament
- An amount is exempt income of a person to the extent to which it is income of the person and is not exempt income under another provision of subpart CW, if the amount is travel, accommodation, attendance, and communication services, as defined in section 20A(7) of the Civil List Act 1979, and,— 30
- “(a) the amount is—
 “(i) referred to in section 20A of that Act;
 “(ii) paid under section 25 of that Act; and
- “(b) the amount is—
 “(i) provided to a person to whom any of section 25(1)(b) to (e) of that Act applies: 35

- “(ii) provided to a member of the family of a person described in **subparagraph (i)**.
“Defined in this Act: amount, exempt income, income”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years. 5
- 103 Section CX 11 replaced (Services for members of Parliament)**
- (1) Replace section CX 11 with:
“**CX 11 Services for members of Parliament**
“*When fringe benefit arises* 10
“(1) A fringe benefit arises when travel, accommodation, attendance, and communications services are exempt income under **section CW 25** (Services for members of Parliament).
“*Relationship with sections CX 5 and CX 24*
“(2) This section overrides sections CX 5 and CX 24. 15
“Defined in this Act: exempt income, fringe benefit”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years.
- 104 Section DW 3 amended (Deduction for general insurance outstanding claims reserve) 20**
- (1) After section DW 3(1), insert:
“*When this section does not apply*
“(1B) This section does not apply for contracts that section DZ 10 (General insurance with risk period straddling 1 July 1993) applies to.” 25
- (2) **Subsection (1)** applies for the 2006–07 and later income years.
- 105 Section EC 7 amended (Valuation methods)**
- (1) Replace section EC 7(5) with:
“*Restrictions on use of valuation methods* 30
“(5) Restrictions apply to the use of valuation methods, as described in sections EC 8 to EC 10.

“Exception to subsection (2): Express written notice required in certain cases

- “(6) Subsection (2) does not apply to the extent to which an election requires a notice under section EC 11.”
- (2) In section EC 7, in the list of defined terms, insert “notice”. 5
- (3) **Subsections (1) and (2)** apply for the 2005–06 and later income years.

105B Section EE 7 amended (What is not depreciable property?)

- (1) Replace section EE 7(e) with: 10
“(e) excepted financial arrangements other than depreciable intangible property:”.
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

106 Section EE 51 amended (Total deductions in section EE 47) 15

- (1) In section EE 51(3B), replace the subsection heading with “*Treatment of assets not available for use*”, and replace “an item that has been withdrawn from use” with “an item that is not available for use”. 20
- (2) **Subsection (1)** applies for the 2005–06 and later income years.

107 Section OB 1 amended (Definitions)

- (1) In the definition of **bonus issue**, replace paragraph (a) with: 25
“(a) means the issue or subdivision of shares in a company, or the giving of credit for some or all of the amount unpaid on any shares in a company, or the forgiveness of some or all of an amount unpaid on any shares in a company, if the company receives no consideration for the issue, subdivision, crediting, or forgiveness other than consideration by way of the shareholder’s electing not to receive money or money’s worth as an alternative to the issue or subdivision; and” 30
- (2) **Subsection (1)** applies for the 2005–06 and later tax years.

Amendment to Social Security Act 1964

108 Section 70 amended (Rate of benefits if overseas pension payable)

In section 70(4) of the Social Security Act 1964, delete “and section CW 28 of the Income Tax Act 2007”.

5

Non-resident investment companies Orders in Council

109 Non-resident investment companies Orders in Council revoked

- (1) Revoke the Income Tax (Non-Resident Investment Companies) Order 1970 (SR 1970/138). 10
- (2) Revoke the Income Tax (Non-Resident Investment Companies) Order 1972 (SR 1972/19).
- (3) Revoke the Income Tax (Non-Resident Investment Companies) Order (No. 2) 1972 (SR 1972/248). 15
- (4) Revoke the Income Tax (Non-Resident Investment Companies) Order (No. 3) 1974 (SR 1974/277).

Amendment to Search and Surveillance Act 2012

110 Schedule amended (Powers in other enactments to which all or part of Part 4 of Search and Surveillance Act 2012 applies) 20

- (1) In the Schedule of the Search and Surveillance Act 2012, in the first item relating to the Tax Administration Act 1994, column 2, replace “16(4)” with “16”. 25
- (2) In the Schedule of the Search and Surveillance Act 2012, in the first item relating to the Tax Administration Act 1994, column 3, replace “obtain and execute warrant to enter private dwelling if issuing officer is satisfied that exercise of applicant’s functions under section 16 of Tax Administration Act 1994 requires physical access to that dwelling” with “have full and free access to things described in section 16 of Tax Administration Act 1994 for purpose of inspection as described in that section, including making extracts and copies”. 30

- (3) In the Schedule of the Search and Surveillance Act 2012, in the first item relating to the Tax Administration Act 1994, column 4, replace “sections 118” with “sections 102, 103(3)(b)(ii), 103(7), 115(1)(b), 118”.
- (4) In the Schedule of the Search and Surveillance Act 2012, the 5
item relating to the Tax Administration Act 1994, section 16C(2), column 4, replace “sections 118” with “sections 102, 103(3)(b)(ii), 103(7), 115(1)(b), 118”.

Other remedial matters

- 111** **Deletion of redundant LAQC legislation** 10
The items in column 2 of the schedule are deleted or repealed from the locations in column 1 of the schedule.
-

Schedule

s 111

Deletion of redundant LAQC legislation

<u>Location</u>	<u>Delete / Repeal</u>
<u>section DS 4 of the Income Tax Act 2007</u>	<u>section DS 4(5)</u>
<u>section DS 4 of the Income Tax Act 2007, the list of defined terms</u>	<u>the words “loss-attributing qualifying company”</u>
<u>section FM 31 of the Income Tax Act 2007</u>	<u>section FM 31(5)</u>
<u>section FM 31 of the Income Tax Act 2007, the list of defined terms</u>	<u>the word “LAQC,”</u>
<u>section FN 4 of the Income Tax Act 2007</u>	<u>section FN 4(4)</u>
<u>section FN 4 of the Income Tax Act 2007, the list of defined terms</u>	<u>the word “LAQC,”</u>
<u>section FO 3(1) of the Income Tax Act 2007</u>	<u>section FO 3(1)(e)</u>
<u>section FO 3 of the Income Tax Act 2007</u>	<u>section FO 3(3)</u>
<u>section FO 3 of the Income Tax Act 2007, the list of defined terms</u>	<u>the word “LAQC,”</u>
<u>section GB 6(1)(c) of the Income Tax Act 2007</u>	<u>the words “and loss-attributing qualifying companies (LAQC)”</u>
<u>section GB 45(2) of the Income Tax Act 2007</u>	<u>section GB 45(2)(b)</u>

<u>Location</u>	<u>Delete / Repeal</u>
<u>section GB 45 of the Income Tax Act 2007, the list of defined terms</u>	<u>the word “LAQC,”</u>
<u>section GB 46(1)(c) of the Income Tax Act 2007</u>	<u>section GB 46(1)(c)</u>
<u>section GB 46(1)(e) of the Income Tax Act 2007</u>	<u>the words “, excluding an LAQC that has a tax loss from the arrangement for the income year,”</u>
<u>section GB 46(3)(b)(ii) of the Income Tax Act 2007</u>	<u>the words “who is not an LAQC and”</u>
<u>section GB 46(6)(a) of the Income Tax Act 2007</u>	<u>section GB 46(6)(a)(ii)</u>
<u>section GB 46 of the Income Tax Act 2007, the list of defined terms</u>	<u>the word “LAQC,”</u>
<u>section GB 47(2) of the Income Tax Act 2007</u>	<u>section GB 47(2)(c)</u>
<u>section GB 47 of the Income Tax Act 2007, the list of defined terms</u>	<u>the word “LAQC,”</u>
<u>section GB 48(1) of the Income Tax Act 2007</u>	<u>section GB 48(1)(a)</u>
<u>section GB 48 of the Income Tax Act 2007, the list of defined terms</u>	<u>the word “LAQC,”</u>
<u>Subpart HA of the Income Tax Act 2007, the heading</u>	<u>the words “and loss-attributing qualifying companies (LAQC)”</u>
<u>section HA 1 of the Income Tax Act 2007</u>	<u>section HA 1(3)</u>

<u>Location</u>	<u>Delete / Repeal</u>
<u>section HA 1(5) of the Income Tax Act 2007</u>	<u>the words “or a loss-attributing qualifying company”</u>
<u>section HA 1 of the Income Tax Act 2007, the list of defined terms</u>	<u>the words “loss-attributing qualifying company”</u>
<u>section HA 4(1) of the Income Tax Act 2007</u>	<u>the words “and LAQCs”</u>
<u>section HA 4 of the Income Tax Act 2007, the list of defined terms</u>	<u>the word “LAQC”</u>
<u>section HA 5(1) of the Income Tax Act 2007</u>	<u>the words “or an LAQC”</u>
<u>section HA 5 of the Income Tax Act 2007, the list of defined terms</u>	<u>the word “LAQC,”</u>
<u>section HA 6(2) of the Income Tax Act 2007</u>	<u>section HA 6(2)(c)</u>
<u>section HA 6 of the Income Tax Act 2007, the list of defined terms</u>	<u>the word “LAQC,”</u>
<u>section HA 11 of the Income Tax Act 2007, the list of defined terms</u>	<u>the word “LAQC,”</u>
<u>section HA 11B of the Income Tax Act 2007</u>	<u>section HA 11B</u>
<u>section HA 12 of the Income Tax Act 2007</u>	<u>section HA 12</u>
<u>section IA 7 of the Income Tax Act 2007</u>	<u>section IA 7(2)</u>

<u>Location</u>	<u>Delete / Repeal</u>
<u>section IA 7 of the Income Tax Act 2007, the list of defined terms</u>	<u>the words “LAQC, loss-attributing qualifying company,”</u>
<u>section MB 1 of the Income Tax Act 2007</u>	<u>section MB 1(4)</u>
<u>section MB 1 of the Income Tax Act 2007, the list of defined terms</u>	<u>the word “LAQC,”</u>
<u>section YA 1 of the Income Tax Act 2007, the definition of market value interest, paragraph (b)</u>	<u>the words “and loss attributing qualifying companies (LAQC)”</u>
<u>section YA 1 of the Income Tax Act 2007, the definition of shareholder, paragraph (c)</u>	<u>the words “and loss attributing qualifying companies (LAQC)”</u>
<u>section YA 1 of the Income Tax Act 2007, the definition of voting interest, paragraph (b)</u>	<u>the words “and loss attributing qualifying companies (LAQC)”</u>
<u>section YB 1 of the Income Tax Act 2007</u>	<u>section YB 1(5)</u>
<u>section YB 1 of the Income Tax Act 2007, the list of defined terms</u>	<u>the words “loss attributing qualifying company”</u>

**Taxation (Livestock Valuation, Assets
Expenditure, and Remedial Matters) Bill**

Legislative history

13 September 2012
29 November 2012

Introduction (Bill 64–1)
First reading and referral to Finance and
Expenditure Committee
