

# **Taxation (Business Tax, Exchange of Information, 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 (Business Tax, Exchange of Information, and Remedial Matters) Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

The Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill is an omnibus bill that would amend the Income Tax Act 2007, the Tax Administration Act 1994, and the Student Loan Scheme Act 2011.

The bill seeks to

- introduce 16 measures to make tax simpler for businesses
- implement the G20/OECD standard for Automatic Exchange of Financial Account Information in Tax Matters
- implement the disclosure requirements for foreign trusts recommended by the Government Inquiry into Foreign Trust Disclosure Rules.

The bill also contains three measures to enable the deployment of Stage 1 of Inland Revenue's Business Transformation Programme.

### **Structure of the bill**

The Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill is in three parts.

Part 1, Exchange of information, contains amendments to the Income Tax Act 2007 in Subpart 1, and amendments to the Tax Administration Act 1994 in Subpart 2.

Part 2, Business tax: AIM provisional tax method, contains amendments to the Income Tax Act 2007 in Subpart 1, and amendments to the Tax Administration Act 1994 in Subpart 2.

Part 3, Business tax and remedial matters, contains amendments to the Income Tax Act 2007 in Subpart 1, amendments to the Tax Administration Act 1994 in Subpart 2, and amendments to the Student Loan Scheme Act 2011 in Subpart 3.

Schedule 1 contains new Schedule 2 of the Tax Administration Act 1994.

The committee has also considered two supplementary order papers. Supplementary Order Paper 190 proposes a transitional regulation-making power during the period of co-existence of two Inland Revenue software platforms. Supplementary Order Paper 229 would extend the student loan interest exemption for study overseas to recipients of New Zealand Government-funded scholarships.

This commentary discusses the main changes we recommend to the bill. It does not cover minor or technical changes.

### **Foreign trust disclosure rules**

The bill as introduced proposes amendments to the information disclosure requirements for foreign trusts with a New Zealand resident trustee. These include requirements for the trust to register with Inland Revenue, file annual returns, disclose the names and contact details of trustees, and pay registration and filing fees. These amendments are intended to deter offshore parties from using foreign trusts for illicit purposes.

The provisions in the bill as introduced largely follow the recommendations of the Government's Inquiry into Foreign Trust Disclosure Rules.

### **Information sharing in relation to foreign trusts**

We support the collection and exchange of information that is essential to the countering of international tax avoidance and other law enforcement procedures. However, we are also very aware that taxpayers have the right to have their information protected. We therefore consider it vital that care is taken to ensure that the jurisdictions with which information is shared have a good record of data security. We have explored the safeguards that are in place to achieve this.

Inland Revenue can provide information in relation to foreign trusts to other tax authorities under exchange of information agreements if relevant parties (settlers and beneficiaries) are resident in those jurisdictions. However, we understand that Inland Revenue is not obligated to send foreign trust information to jurisdictions with which it has a tax treaty if it believes there is a risk in how that information will be used or disclosed.

We understand that Inland Revenue intends to evaluate each jurisdiction before sharing any foreign trust information. Therefore, information pertaining to foreign trusts will not necessarily be shared with all jurisdictions that New Zealand has exchange of information agreements with. We understand that all exchanges of information are

also subject to review and sign-off by an experienced senior revenue official. This allows for judgement on a case-by-case basis.

New Zealand's decisions concerning the exchange of trust information will also be informed by peer reviews on confidentiality and data safeguards by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes.

### **Information sharing with the Overseas Investment Office**

It is possible that some trusts that meet the foreign trust definition, having a New Zealand trustee and a foreign settlor, may want to invest in New Zealand assets. Therefore, we recommend the development of an Approved Information Sharing Agreement to enable Inland Revenue to disclose information about a foreign trust where requested by the Overseas Investment Office for the purposes of approving investment in sensitive New Zealand assets by overseas investors.

This would allow the Overseas Investment Office to utilise relevant information when considering applications from overseas people who intend to invest in New Zealand. The Approved Information Sharing Agreement would prescribe which information could be shared and how it could be shared.

### **Exemption from registration and filing fees**

Clause 10 of the bill as introduced would add section 59E to the Tax Administration Act to set a registration fee of \$270 and an annual filing fee of \$50 for each foreign trust. New section 59E includes a regulation-making provision to change the fees by Order in Council. We recommend the addition of subsection 59E(5) to provide an exemption from these fees for resident foreign trustees if they are natural persons who are not in the business of providing trustee services. This would relax the requirements for family trusts with particular circumstances that mean the fees could amount to a reasonably large portion of the trust's annual income.

### **Extension of grace period from two to four years for natural persons not in the business of providing trustee services**

We recommend amendments to clause 10 of the bill as introduced concerning new section 59C(3) of the Tax Administration Act. Our changes would extend the grace period for registration of a foreign trust from two to four years, and extend eligibility for the grace period more generally to resident foreign trustees who are natural persons not in the business of providing trustee services.

We expect that the grace period would most likely apply to trustees of a deceased estate, or a family trust settled by a family member offshore. This would give these people additional time to become familiar with and begin complying with the disclosure requirements for foreign trusts.

### **Limited disclosure for historical settlements**

We recommend amending clause 10 of the bill as introduced to replace and insert a new section 59B of the Tax Administration Act. It would provide that, for trustees who are natural persons not in the business of providing trustee services, the period

for which historical settlements must be disclosed would be limited to four years prior to either the point when the trustee first becomes required to register the foreign trust (before taking into account the grace period), or the date existing trusts are required to register (30 June 2017), whichever comes later. This would address compliance costs for non-professional trustees.

### **Definition of settlor and settlement**

The definition of “settlor” and “settlement” that apply to the foreign trust disclosure rules are broad in the bill as introduced. This is because they simply repeat the existing definitions used for tax purposes, and include persons who transfer value to a trust for the benefit of the trust or on the terms of the trust. We consider that these are too wide for the purposes of the foreign trust disclosure rules.

Therefore, we recommend amending clause 10 to insert sections 59B(3)(b) and 59D(2)(c) into the Tax Administration Act to limit the definition of settlor and settlement to persons who have provided money, goods, or services that are more than incidental. The proposed amendments would exclude people who have only provided services to the trust that are below market value, and are minor and incidental to the activities of the trust, from being a settlor for the purposes of the foreign trust disclosure rules.

### **Trustee able to complete statutory declaration where person is deceased or cannot be located**

We recommend amending clause 10, inserting new section 59B(4) into the Tax Administration Act, to provide for situations when a person is deceased or cannot be located, and their agreement therefore cannot be obtained. Where a person is deceased, the trustee should note that fact on the declaration. Where a person cannot be located, the resident foreign trustee must outline in the statutory declaration their efforts to find the person. This would enable registration requirements to be met where a person is deceased or unable to be traced.

### **Clarification regarding financial statement requirements**

We recommend the making of an Order in Council under existing section 21C of the Tax Administration Act to specify minimum standards for the financial statements of a foreign trust. This would make it clear for trustees of foreign trusts, particularly those who do not ordinarily prepare financial statements, what information must be provided.

### **Extension to annual return deadline**

We recommend amending clause 10, inserting sections 59D(3)(a) and (b) into the Tax Administration Act, to extend the timeframe for filing foreign trust annual returns from three months to within six months from the end of the trust’s balance date. For trusts without a balance date, the timeframe would be six months after the end of the 31 March tax year.

This would give resident foreign trustees more time to gather any required documentation and meet their obligations. We recognise the importance of allowing more time, particularly where much of the documentation may be held overseas.

### **Liability for failure to comply**

We recommend inserting clause 5(2B) to add section HC 26(1B) to the Income Tax Act. This would provide the Commissioner with discretion to reinstate the foreign-sourced income exemption if a trustee makes a mistake, in relation to registration or disclosure, that is unintentional and remedied within a reasonable time frame. We consider that loss of the tax exemption on offshore income could be a very significant penalty for a mistake of this nature.

### **Clarifying the definition of a foreign trust**

“Foreign trust” is defined in the Income Tax Act 2007. However, we recommend inserting new clause 4B to amend section HC 11 to clarify that the definition of “foreign trust” applies to all trusts with a foreign settlor at a point in time, regardless of whether a distribution has been made. This would address any confusion around the definition.

### **Automatic Exchange of Information**

The Automatic Exchange of Information (AEOI) proposals in the bill as introduced would implement the G20/OECD standard for the automatic exchange of information with applicable jurisdictions.

The initiative is designed to counter offshore tax evasion by requiring financial institutions to undertake due diligence to identify offshore accounts, and to report information on those accounts to Inland Revenue. This information would then be shared with other jurisdictions under tax treaty exchange of information provisions, and reciprocal exchanges would also occur.

### **Use of residual information for non-Automatic Exchange of Information purposes**

The Common Reporting Standard (CRS) allows a wider approach to reporting as a way of reducing compliance costs for financial institutions. This means that financial institutions can choose to supply to Inland Revenue all of the non-resident information they have collected, rather than just that which relates to residents of the approximately 100 reportable jurisdictions. In doing so they would effectively pass on the responsibility for filtering the information to Inland Revenue. We have looked into Inland Revenue’s use of the residual information.

We understand that the residual information would relate to non-residents, limiting its potential use by Inland Revenue for non-AEOI purposes. However Inland Revenue considers it will be a valuable source of information for verifying that non-residents are paying the correct tax rate, verifying whether tax credits claimed on the basis of residence are correct, and generally buttressing the residence rules.

We understand that Inland Revenue's use of this information (and other information exchanged with tax treaty partners) for these purposes is permitted due to the extremely broad information-gathering powers of the Commissioner of Inland Revenue. These stem from the Commissioner's statutory obligations to protect the integrity of the tax system, and to collect the highest net revenue practicable. To enable these obligations to be given effect, section 6, Principle 10 of the Privacy Act 1993 also allows for the use of personal information for tax purposes beyond the specific purposes for which it was collected.

The information reported under the CRS in respect of individuals who are identified as non-resident account holders, and controlling persons, will include identity information and financial account information. This is wider than the information collected from non-resident withholding tax returns.

We understand that Inland Revenue intends to be transparent about its use of any residual information, including communicating this in a planned AEOI public education campaign.

#### **Maximum limit on penalties**

We recommend amending clause 13 that introduces section 142(H)(6) of the Tax Administration Act to cap the absolute liability penalties that could be imposed.

An amendment to subsection 142H(6)(a) would cap the penalty that could be imposed on financial institutions at \$10,000 per reporting period for absolute liability offences. This amount represents half the amount applicable for a first offence under the penalty for lack of reasonable care.

Amending subsection 142H(6)(b) would cap the penalty per reporting period for lack of reasonable care offences at \$100,000. These amendments would address the lack, in the bill as introduced, of a cap or limitation on the penalties that could be applied.

#### **Penalty defences**

The bill as introduced proposes a suite of measures for ensuring compliance, including strong sanctions for deterring non-compliance and errors. We consider that there are strong arguments for relaxing those sanctions for a transitional introductory period. The Common Reporting Standard (CRS) is a complex regime, and financial institutions face short implementation timelines.

Therefore, we recommend amending clause 13 which would introduce section 142H(2) into the Tax Administration Act to extend by three months to 1 July 2019 the transitional period during which financial institutions would be permitted to mount a "reasonable efforts" defence against the imposition of penalties.

We also recommend amendments to clause 13 which introduces section 142H to provide financial institutions with a permanent ability to mount a defence to the imposition of a penalty that failure to comply with a CRS obligation was due to circumstances outside their control.

## **Transitional regulations as provided for by Supplementary Order Paper 190**

As part of Inland Revenue's business transformation, changes to legislation and administrative processes will be required to support the organisation's upgrade to new technology. Supplementary Order Paper 190 would insert new section 227B into the Tax Administration Act allowing the Governor-General, by Order in Council on the recommendation of the Minister of Revenue, to make regulations providing for transitional exemptions and, as and when necessary, to facilitate the smooth transition from Inland Revenue's FIRST to START software platforms without causing undue delay that might arise from the standard practice of implementing changes through legislation.

We consider that regulations to override primary legislation should be drafted in the most specific and limited terms possible. We are concerned about the broad scope of the provision as drafted in Supplementary Order Paper 190, and the lack of safeguards to protect taxpayers. Therefore, we recommend the following changes to address these concerns.

### **Scope of regulation-making power limited**

Clause 120D would insert section 277B(1) into the Tax Administration Act to provide for the regulation-making power. We recommend an amendment to subsection 227B(1) of the Tax Administration Act to limit the purpose of the regulation-making power to resolving administrative issues arising from the transition between Inland Revenue's FIRST and START software platforms.

### **Transitional regulations cannot increase taxpayer liability**

We recommend amending clause 120D that introduces subsection 227B(3)(a) to provide that transitional regulations cannot be made that would result in a taxpayer being subject to any liability that would exceed their liability under the Tax Administration Act if no regulation had been made. This would balance taxpayers' rights with the need to deal with any urgent issues that may arise.

### **Exclusion of certain provisions of the Tax Administration Act**

We recommend amending clause 120D to include new section 227B(3)(b) to exclude the following provisions of the Tax Administration Act from the scope of the regulation-making power:

- the care and management provisions in sections 6 and 6A
- the information provisions in sections 16 to 21
- the secrecy provisions in Part 4
- a shortfall penalty under sections 141 to 141K
- a criminal penalty under sections 143 to 148.

We consider that it would be appropriate to include within the scope, provisions in Part 9 that relate to the penalties that are imposed automatically, and to exclude those

relating to shortfall penalties and criminal penalties. This would provide the ability to deal with any issues that may arise with the transition of the penalties that are automatically imposed, as long as they do not result in an increase in liability for a taxpayer.

### **Transitional regulations cannot remove or diminish the rights of a taxpayer**

We recommend including new subsection 227B(3)(c) to provide that any transitional regulations made cannot remove or diminish the rights of any taxpayer under the following provisions of the Tax Administration Act:

- the disputes provisions in Part 4A
- the provisions for determinations under Part 5
- binding rulings under Part 5A
- the objection and challenge provisions in Parts 8 and 8A
- the provisions relating to remission, relief, and refunds in Part 11.

The inclusion of new subsection 227B(3)(d) would provide that any regulations made would not have retrospective application.

We consider that these amendments would serve as a safeguard against the making of regulations that would detrimentally affect taxpayers. The amendments would also reflect the intention to make the business transformation programme work without penalising taxpayers.

### **Regulations only to be made when necessary and with consultation**

We recommend the inclusion of new subsection 227B(5)(a) to provide that regulations could only be made where they are necessary to address matters arising during Inland Revenue's transition to new technology, as described in proposed purpose subsection 227B(1). Our amendment would improve on the wording provided in Supplementary Order Paper 190 by removing the words "or desirable" and allowing only for regulations that are "necessary".

Our recommended subsection 227B(5)(b) would provide that regulations could only be made if the Minister was satisfied that the prescribed consultation process had been undertaken over a period of at least four weeks and was robust enough to ensure the interests of taxpayers were protected. Providing for consultation on any regulation would allow a procedural check to ensure that the regulation-making power is used appropriately. It would also give affected parties reassurance that their interests would be properly considered.

## **Changes to make business tax simpler**

### **Disclosure of information to approved credit reporting agencies**

Clause 104 of the bill as introduced would insert a new section 85N into the Tax Administration Act authorising the sharing of tax information, depending on the taxpayer's circumstances, with credit reporting agencies. The bill as introduced provided

that a threshold of \$150,000 of unpaid tax would be prescribed in legislation, with an accompanying empowering provision that would allow this amount to be amended by an Order in Council.

The Regulations Review Committee has advised us that this drafting is a technical Henry VIII power, as it authorises a threshold set by primary legislation to be amended by Order in Council. We have considered this advice and recommend that an amendment be made to section 85N(2)(d)(i) to provide that the amount of unpaid tax is prescribed by the Governor-General by Order in Council. We consider that this would resolve the concerns, while maintaining the desired flexibility to amend the amount in the future.

### **Estimating at the third instalment date**

We recommend amending clause 109 to insert new section 120KBB(4)(aa) into the Tax Administration Act to make it clear that a person who has paid provisional tax using the standard method can still get the interest concession if they swap to estimation for the last instalment.

This would mean that taxpayers who use the standard uplift method can either base their final instalment of provisional tax on the standard uplift amount or their estimate of their residual income tax for the year, less payments made to date. This would apply to all standard uplift provisional taxpayers with the exception of those who wish to use the safe harbour from use-of-money-interest when their residual income tax is less than \$60,000. Those people must pay all three instalments using the standard uplift amounts.

### **Provisional tax attribution**

The bill as introduced proposes to simplify the provisional tax payments of closely-held companies and their shareholder-employees. The shareholder-employees and the company could agree that the company could pay provisional tax for both itself and for the shareholder-employees. At year-end this provisional tax would then be allocated to either the company or the shareholder-employees. Use-of-money interest would then potentially apply to both the company and the shareholder-employees.

We are concerned that the proposal in the bill as introduced is overly complex and that further work is needed to simplify the mechanism. The intention is to have the amendments come into effect on 1 April 2018. We consider that this does not allow enough time for the significant work that is needed to make the rules much simpler. Therefore, we recommend removing all of the provisional tax attribution provisions contained in clauses 72; 73; 77 to 79; 82; 92(8), (9) and (10); 96; 102; and 111 from the bill as introduced.

### **Extending withholding tax to labour-hire firm contractors**

We recommend amending clause 93(21) to provide that an extension of time up to a maximum of 3 months would be available for firms that may struggle to implement the proposed withholding tax changes by 1 April 2017. We appreciate that there is

likely to be a short period of time between enactment of the bill and the 1 April 2017 application date of the proposed changes.

We consider that limiting this extension of time to those firms which are genuinely unable to have systems in place for reasonably cost-effective compliance before 1 April 2017 would ensure that the extension of time is only applied where it is necessary. This would reduce the impact that the extension would have on the contractors of labour-hire firms.

#### **Permission to provide information verbally in a prescribed or approved form**

We recommend inserting new clause 101C to add new section 35(2) to the Tax Administration Act to provide that the Commissioner may allow a person to provide the information required in a prescribed form, in a manner other than writing. This would allow for situations where it is easier for taxpayers and more efficient for Inland Revenue if the information in the form, and the declaration made in completing the form, are able to be made verbally.

#### **Accounting Income Method for calculating provisional tax**

The bill would introduce a new provisional tax method, the Accounting Income Method (AIM). AIM would allow businesses to pay their provisional tax based on a calculation prepared by their accounting software.

#### **Criteria for taxpayers being removed from Accounting Income Method regime**

AIM allows taxpayers considerable judgement in the preparation of their provisional tax payments without the backstop of use-of-money-interest. We are aware of concerns that taxpayers could continue to meet the reasonable care standard in the preparation of their provisional tax payments, and make all the standard adjustments required by the determination but still end up with a provisional tax payment profile that does not match the income-earning process of their business. This may not be due to deliberate action by the taxpayer to manipulate numbers but would have a similar result.

Therefore, we recommend amending subsection (5B)(e), introduced by clause 31, to remove the ability to use AIM for only those taxpayers who make judgement calls that have the purpose of reducing their tax liabilities so that those liabilities do not reflect their underlying income earning. We consider that the amended wording would provide a safeguard, and supplement the reasonable care threshold penalty.

#### **Minority view of the New Zealand Labour Party, Green Party of Aotearoa New Zealand, and New Zealand First**

We support the passing of the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill because it takes some important steps to improve the disclosure of information regarding foreign trusts. However, we believe the bill fails on two important counts in that regard.

First, the bill fails to implement a core recommendation of the Government's Inquiry into Foreign Trust Disclosure Rules to immediately implement Phase Two of the Anti-Money-Laundering law changes. These would extend the reporting requirements to lawyers, accountants, and real estate agents. The failure of the National-led Government to implement these changes in a timely manner leaves a significant gap in our regime, and represents a failure to fulfil our obligations to the international community.

Secondly, we believe that in order for New Zealand's foreign trust regime to play a useful part in cracking down on tax evasion and corrupt practices, we need greater transparency in terms of the information about foreign trusts. We believe that the starting point for this should be a publicly available register of foreign trusts, just as we have for companies and other forms of trusts. While there would need to be some safeguards on the operation of such a register, the absence of it will limit the ability of New Zealand to play its part in supporting other jurisdictions who are concerned about the potentially unlawful behaviour of their citizens.

We also have concerns about clause 104 relating to amendments to the Tax Administration Act governing the disclosure of information to approved credit reporting agencies; more specifically, the addition of section 85N(2)(d)(i), and the removal of section 85N(2)(d)(i)(A) to the Tax Administration Act regarding the disclosure of information to approved credit reporting agencies.

This amendment is a significant change to the law regarding the sharing of information, however, one we do agree with. Initially, the bill proposed a series of conditions that would have to be met before the Commissioner could disclose a taxpayer's information to an approved credit reporting agency, including a dollar threshold. The proposed amendment also contained the highly unusual step of including a Henry VIII provision that allowed this threshold to be altered by Order in Council. In light of advice, the committee has removed the dollar threshold but retained the ability to determine the threshold by Order in Council. By ensuring the Henry VIII clause is removed, the bill fails to provide any indication of a dollar threshold, thus not providing any clear guidance to taxpayers as to when their information may be shared with an approved credit reporting agency. We believe that 85N(2)(d)(i)(A) should have remained and 85N(2)(d)(i), which is the Henry VIII provision, removed.

## Appendix

### Committee process

The Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill was referred to the committee on 11 August 2016. The closing date for submissions was 9 September 2016. We received and considered 24 submissions from interested groups and individuals. We heard oral evidence from 13 submitters.

We received advice from the Inland Revenue Department and our specialist tax advisor, Therese Turner (Chartered Accountant). The Regulations Review Committee reported to the committee on the powers contained in Supplementary Order Paper 190, and the technical “Henry VIII” power in clause 104 relating to the setting of the level of reportable unpaid tax. The committee also considered Supplementary Order Paper 229.

### Committee membership

David Bennett (Chairperson)

Andrew Bayly

Chris Bishop

Hon Clayton Cosgrove

Julie Anne Genter (until 12 October 2016)

Stuart Nash

Rt Hon Winston Peters

Grant Robertson

Jami-Lee Ross

Alastair Scott

David Seymour

James Shaw (from 12 October 2016)

**Taxation (Business Tax, Exchange of Information, and  
Remedial Matters) Bill**

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~



*Hon Michael Woodhouse*

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Government Bill

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

**1 Title**

This Act is the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act **2016**.

**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) **Section 4** is treated as coming into force on 21 October 2013.

(2B) Section 55C is treated as coming into force on 22 November 2013.

(2C) Section 55B is treated as coming into force on 1 October 2015.

10

(3) ~~Section 121~~ **Sections 55D and 121** are treated as coming into force on 14 May 2016.

(3B) Sections 91B, 91C, 91D, 92(5C), and 102B are treated as coming into force on 1 July 2016.

- (4) **Sections 6, 8(1) to (7), 9(1), (2), and (3), 11B, 11C, 12B, 12C, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 26** come into force on 1 July 2017.
- (5) **Sections 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 74, 75, 76, ~~80, 81~~, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92(2), (3), (4), (5), (5B), (6), and (7), 93, 95, 97, 98, 99, 100, 101, 101B, 103, 104, 105, 407, 108, 109, 110, 111B, 114, and 116** come into force on 1 April 2017.
- (6) **~~Part 2 and sections 72, 73, 77, 78, 79, 82, 92(8), (9), and (10), 96, 402, and 444~~** comes into force on 1 April 2018.

## Part 1

### Exchange of information

#### Subpart 1—Amendments to Income Tax Act 2007

#### 3 Income Tax Act 2007 amended

**This subpart** amends the Income Tax Act 2007.

#### 4 Section BH 1 amended (Double tax agreements)

In section BH 1(1)(b)(i), replace “the government of any territory” with “1 or more governments of territories”.

#### 4B Section HC 11 amended (Foreign trusts)

In section HC 11,—

- (a) in the words before paragraph (a), replace “in relation to a distribution” with “at a moment in time”:
- (b) in paragraph (b), replace “on the date of distribution” with “with the moment in time”.

#### 5 Section HC 26 amended (Foreign-sourced amounts: resident trustees)

(1) In section HC 26(1)(b)(ii), replace “year.” with “year); and”.

(2) After section HC 26(1)(b), insert:

~~(e) for a foreign trust, the trust is registered before the income is derived and the trustee complies with the trustee’s requirements under sections 22, **59B, and 59C** of the Tax Administration Act 1994 for the income year.~~

(c) for a foreign trust for which a resident trustee applies for registration within the period (the **application period**) given by **section 59C** of the Tax Administration Act 1994 and that is registered by the end of the income year (the **post-deadline year**) beginning next after the end of the application period,—

- (i) the trust has a trust deed; and

- (ii) the income year ends after the day on which the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2016 receives the Royal assent; and
- (iii) for an income year that includes part of the application period or is the post-deadline year, the trust is registered before the end of the post-deadline year and is not deregistered before the foreign-sourced amount is derived; and 5
- (iv) for an income year beginning after the end of the post-deadline year, the trust is registered when the foreign-sourced amount is derived; and 10
- (v) the trustee complies with the requirements under sections 22, 59B, 59C, and 59D of the Tax Administration Act 1994 that the trustee must meet during the income year; and
- (d) for a foreign trust to which **paragraph (c)** does not apply,—
- (i) the trust has a trust deed; and 15
- (ii) the trust is registered at the beginning of the income year; and
- (iii) the trust is registered when the foreign-sourced amount is derived; and
- (iv) the trustee complies with the requirements under sections 22, 59B, 59C, and 59D of the Tax Administration Act 1994 that the trustee must meet during the income year. 20
- (2B) After section HC 26(1), insert:
- Time for compliance with requirements*
- (1B) For a trustee to satisfy **subsection (1)(c)(v) or (d)(iv)** for an income year, the trustee must— 25
- (a) comply in the income year with the requirements referred to in the subparagraph:
- (b) satisfy the Commissioner that the trustee made reasonable efforts in the income year to comply with the requirements referred to in the subparagraph and corrected the failure to comply within a reasonable period of time after the trustee became aware of the failure. 30

- (3) Repeal section HC 26(2), (3), and (4).

## 6 Section YA 1 amended (Definitions)

In section YA 1, replace the definition of **foreign account information-sharing agreement** with:

**foreign account information-sharing agreement** means a double tax agreement that facilitates the automatic exchange by the parties of information relating to financial accounts, including—

- (a) the *Agreement between the Government of New Zealand and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA* brought into force for New Zealand by the Double Tax Agreements (United States of America—FATCA) Order 2014 (LI 2014/209), as amended from time to time: 5
- (b) the multilateral *Convention on Mutual Administrative Assistance in Tax Matters, as amended by 2010 Protocol* which was brought into force for New Zealand by the Double Tax Agreements (Mutual Administrative Assistance) Order 2013 (SR 2013/437), as amended from time to time

Subpart 2—Amendments to Tax Administration Act 1994 10

7 Tax Administration Act 1994 amended

**This subpart** amends the Tax Administration Act 1994.

8 Section 3 amended (Interpretation)

(1) This section amends section 3(1).

**(1B)** In the definition of **civil penalty**, after paragraph (cb), insert: 15

**(cc)** a penalty under **section 142H or 142I**; or

(2) Insert, in appropriate alphabetical order:

**CRS applied standard** means the CRS standard as modified by **section 1850** for the determination of requirements under this Act

**CRS publication** means the *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, published by the Organisation for Economic and Cultural Development 20

**CRS standard** means the *Common Standard on Reporting and Due Diligence for Financial Account Information*, as amended from time to time, which is a standard— 25

(a) developed by the Organisation for Economic and Cultural Development and the Group of Twenty countries, ~~to govern the application of the MCMAA convention and the MCA agreement to accounts that are financial accounts as defined~~; and

(b) agreed by the Council for the Organisation for Economic and Cultural Development on 15 July 2014; and 30

(c) contained in Part IIB of the CRS publication

(3) Insert, in appropriate alphabetical order:

**FATCA agreement** means the *Agreement between the Government of New Zealand and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA*, commonly known as the intergovernmental agreement, which was brought into force for New Zealand 35

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by the Double Tax Agreements (United States of America—FATCA) Order 2014 (LI 2014/209), as amended from time to time

(3B) ~~Insert, in appropriate alphabetical order:~~

~~**information**, for the purpose of Part 11B, includes a self-certification~~

(4) Insert, in appropriate alphabetical order:

**maintain**, for a financial institution to which the CRS applied standard or the FATCA agreement applies in relation to a financial account, includes,—

- (a) if the financial account is a custodial account, holding custody over the assets in the financial account, including by holding assets in street name for an account holder in the financial institution:
- (b) if the financial account is a depository account, having an obligation to make payments with respect to the financial account, other than as agent for another financial institution:
- (c) if the financial account is an equity or debt interest, being the financial institution in which the interest is held:
- (d) if the account is a cash value insurance contract or an annuity contract, having an obligation to make payments with respect to the contract

(5) ~~Insert, in appropriate alphabetical order:~~

~~**MCA agreement** means the *Multilateral Competent Authority Agreement*, which was signed under Article 6 of the MCMAA convention for the New Zealand competent authority on 3 June 2015 and provides a mechanism for a competent authority of a territory to exchange routinely with other competent authorities the information collected under the MCMAA convention, as amended from time to time~~

(6) ~~Insert, in appropriate alphabetical order:~~

~~**MCMAA convention** means the *multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended by 2010 Protocol*, which was brought into force for New Zealand by the Double Tax Agreements (Mutual Administrative Assistance) Order 2013 (SR 2013/437), as amended from time to time~~

(7) Insert, in appropriate alphabetical order:

**passive income**, in the application of the FATCA agreement or the CRS applied standard to a person or entity for a period, means an amount that is not income from a transaction entered into in the ordinary course of the business of a dealer in financial assets and that is—

- (a) a dividend:
- (b) interest:
- (c) income equivalent to interest:

- (d) rent or a royalty, other than rent or a royalty derived in the active conduct of a business conducted, partly or wholly, by employees of the person or entity:
- (e) an annuity:
- (f) for financial assets that give rise to amounts included under **paragraphs (a) to (e)**, the amount by which gains from the sales or exchanges of the financial assets in the period exceed losses from the sales or exchanges: 5
- (g) the amount by which gains from the transactions in financial assets in the period exceed losses from the transactions: 10
- (h) the amount by which gains from the foreign currency transactions in the period exceed losses from the transactions:
- (i) the amount by which gains from the swaps in the period exceed losses from the swaps:
- (j) an amount received under a cash value insurance contract 15
- (8) Repeal the definition of **qualifying resident foreign trustee**.
- (8B) Repeal the definition of **settlement**.
- (8C) Repeal the definition of **settlor**.
- (8D) In the definition of **tax return**, after paragraph (b), insert:
- (bb) **does not include a report required by section 185N to be provided to the Commissioner; and** 20
- (9) Insert, in appropriate alphabetical order:
- taxpayer identification number**, for a person ~~who is (without taking into account any double tax agreement that would otherwise apply) treated as tax resident in~~ and a jurisdiction other than New Zealand, means the functional equivalent of the person’s tax file number in that jurisdiction 25
- (10) Insert, in appropriate alphabetical order:
- TIN** means a taxpayer identification number
- 9 Section 22 amended (Keeping of business and other records)**
- (1) In section 22(2), paragraph (fc), replace “Act,—” with “Act:”. 30
- (2) After section 22(2)(fc), insert:
- (fd) must meet requirements under Part 11B, including requirements expressed as being imposed on an entity other than a person, of—
- (i) a financial institution, as defined in the FATCA agreement:
- (ii) a financial institution, as defined in the CRS applied standard,— 35
- (3) After section 22(2)(lc), insert:

- (ld) a failure by the person to obtain a self-certification as required by the CRS applied standard; and
- (le) steps taken by the person and evidence relied upon by the person in performing obligations under Part 11B relating to the CRS applied standard; and

5

(3B) In section 22(7)(d), before subparagraph (i), replace “section 59B(3)” with “**section 59C(3)**”.

(4) Repeal section 22(7)(d)(i) and (ii).

**10 Section 59B replaced (Disclosure of foreign trust particulars)**

Replace section 59B with:

10

**59B Foreign trust with resident foreign trustee: registration and disclosure**

(1) The Commissioner may register a foreign trust if the foreign trust has a resident foreign trustee ~~and a trust deed~~ and a trustee pays the prescribed fee.

(2) Resident foreign trustees of a foreign trust ~~having a trust deed~~ must apply to the Commissioner for registration of the foreign trust and pay the prescribed fee.

15

(3) A trustee applying for registration of a foreign trust (the ~~applicant-contact trustee~~) is responsible for communicating with the Commissioner for the trust and must provide, with the application and fee, all that is relevant to the trust of—

(a) the name ~~and other identifying particulars~~ of the trust:

20

(b) the ~~date and detail~~ date, amount, settlor, and nature of each settlement on the ~~trust~~ trust that is not a provision to the trustee at less than market value of minor services incidental to the activities of the trust and is made in the period of time ending with the application and beginning with—

25

(i) the date on which the trust is formed, if a trustee is not a natural person or is in the business of providing trustee services; or

(ii) the later of the date on which the trust is formed and 30 June 2013, if **subparagraph (i)** does not apply and a trustee becomes required to register the trust on the date on which the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2016 receives the Royal assent; or

30

(iii) the later of the date on which the trust is formed and the date that is 4 years before the earliest date on which a trustee becomes required to register the trust, if **subparagraphs (i) and (ii)** do not apply;

35

(c) the name, email address, ~~residential address, country of tax residence, and taxpayer identification number of:~~ physical residential or business

- address, jurisdiction of tax residence, taxpayer identification number, and connection with the trust of—
- (i) each settlor who makes a settlement referred to in **paragraph (b)**:
  - (ii) each person with a power ~~under the trust deed to control the dismissal or appointment of~~ to appoint or dismiss a trustee, to amend the trust deed, or to add or remove a beneficiary: 5
  - (iib) each person with a power to control the exercise of a power referred to in **subparagraph (ii)**:
  - (iii) each person with a power ~~under the trust deed~~ to control a trustee in the administration of the trust: 10
  - (iv) each trustee:
  - (~~v~~) ~~for a fixed trust, each beneficiary and nominee for an underlying beneficiary:~~
  - (v) for a fixed trust, each beneficiary that is not a minor and each nominee for a beneficiary: 15
  - (vi) for a fixed trust and a beneficiary who is a minor, the parent or guardian of the beneficiary:
  - (cb) for a fixed trust and a beneficiary who is a minor, the name, age, and taxpayer identification number of the beneficiary: 20
  - (d) for a discretionary trust, details of each beneficiary or class of beneficiary sufficient for the Commissioner to determine, when a distribution is made under the trust ~~or when rights apparently vested under the trust are exercised~~, whether a person is a ~~member of the class~~ beneficiary:
  - (e) a copy of the trust deed and of each document that amends or supplements the trust deed, and a copy of each document that is the functional equivalent of a trust deed or amending or supplementing document. 25
  - (4) ~~The applicant trustee must provide with the application a signed declaration that each person referred to in **subsection (3)(c)(i) to (iv)** has been informed of, and has agreed to provide the information necessary for compliance with, the requirements relating to the provision of information imposed by all of—~~ 30
    - (~~a~~) ~~the Tax Administration Act 1994:~~
    - (~~b~~) ~~the Anti Money Laundering and Countering Financing of Terrorism Act 2009:~~
    - (~~c~~) ~~the regulations made under the Anti Money Laundering and Countering Financing of Terrorism Act 2009.~~ 35
  - (4) The contact trustee must provide a signed declaration that each person referred to in **subsection (3)(c)(i) to (vi)**—
    - (a) is deceased; or

- (b) despite the efforts of the contact trustee detailed in the declaration, cannot be located by the contact trustee; or
- (c) has been informed of, and has agreed to provide the information necessary for compliance with, the requirements relating to the provision of information relating to the trust and persons connected with the trust imposed by all of— 5
- (i) the Tax Administration Act 1994;
- (ii) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
- (iii) the regulations made under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. 10
- (5) ~~A resident~~ A contact trustee must provide to the Commissioner the details of an addition or alteration to a particular to which **subsection (3)** refers and any signed declaration under **subsection (4)** required as a consequence of the addition or alteration. 15
- (6) A contact trustee who anticipates ceasing to be the person communicating with the Commissioner for the trust must provide to the Commissioner the details of—
- (a) the anticipated date on which the trustee ceases to be the contact trustee for the foreign trust; 20
- (b) the email address and physical residential address of the trustee after the anticipated date;
- (c) the name, email address, and physical residential or business address of the replacement contact trustee for the foreign trust after the anticipated date. 25
- (7) If a foreign trust has more than 1 resident foreign trustee, each resident foreign trustee is responsible for the performance of the obligations imposed on a trustee relating to registration of the trust, disclosure of information, annual returns, financial statements, and payment of fees.
- 59C Time limits for registration and disclosure of changes** 30
- (1) ~~A resident trustee of a foreign trust~~ resident foreign trustee who becomes required to register the foreign trust under **section 59B**—
- (a) ~~on the date of enactment of this section~~ (the **assent date**) on which the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act **2016** receives the Royal assent, is required to apply for the registration by in the period beginning with the assent date and ending with 30 June 2017, except if **subsection (3)** applies; 35
- (b) ~~after the date of enactment of this section~~ assent date, is required to apply for the registration within 30 days after in the period of 30 days

- beginning from the day on which the ~~liability~~ requirement commences, except if **subsection (3)** applies.
- (2) A resident foreign trustee who is required by **section 59B(5)** to provide information to the Commissioner after an application for the trust to be registered, must provide the information within 30 days after becoming aware of the addition or alteration, ~~except if **subsection (3)** applies.~~ 5
- (3) A period for the meeting of a requirement that would otherwise be given by ~~**subsection (1) or (2)**~~ for a trustee is given by **subsection (4)** for the trustee if—
- (a) ~~the trustee is a natural person who was appointed a trustee of the foreign trust before becoming a New Zealand resident; and~~ 10
- (a) each trustee of the foreign trust is a natural person; and
- (b) ~~the trustee becomes a New Zealand resident on or after 1 October 2006; and~~
- (b) for each resident foreign trustee of the foreign trust, the foreign trust is the first trust for which the trustee has been a resident foreign trustee; and 15
- (c) ~~the trustee~~ each trustee of the foreign trust is not in the business of providing trustee services; and
- (d) ~~the trustee has not been resident in New Zealand on any day in the period of 5 years that ends immediately before the trustee becomes a New Zealand resident; and~~ 20
- (e) the end of the period of ~~2 years~~ 4 years and 30 days beginning with the earliest date on which ~~the trustee~~ a trustee of the foreign trust becomes a ~~New Zealand resident~~ foreign trustee (the **grace period**) occurs after the period that would otherwise be given by ~~**subsection (1) or (2)**~~. 25
- (4) If **subsection (3)** applies for a requirement imposed on a trustee, the trustee must meet the requirement within the grace period.
- 59D Annual return for foreign trust**
- (1) A resident foreign trustee ~~of a foreign trust~~ must provide to the Commissioner a return for the foreign trust, and the prescribed fee, for each year (the return year) that— 30
- (a) includes a period during which the foreign trust is registered or **section 59B** requires a resident foreign trustee to register the foreign trust; and
- (b) ends with— 35
- (i) a date (the **balance date**) for which the ~~foreign trust~~ resident foreign trustee prepares financial statements or is required to prepare financial statements; or

- (ii) ~~a~~ 31 March if the ~~foreign trust~~ resident foreign trustee does not prepare financial statements and is not required to prepare financial statements; and
- (c) begins after 31 March 2017, if a resident foreign trustee ~~is liable be-~~ comes required to register the foreign trust on the date of enactment of this section; and 5
- (d) if the resident foreign trustee has a grace period referred to in **section 59C(3)**, ends after the grace period.
- (2) A return must be in the ~~prescribed form~~ form prescribed by the Commissioner and include— 10
- (a) ~~each change during the year to information that is required to be provided when the trust is registered;~~
- (b) ~~the financial statements for the trust and the year;~~
- (b) financial statements for the trust and the return year, if the trustee prepares financial statements or is required to prepare financial statements; 15
- (e) ~~the date and nature of each settlement made on the trust in the year;~~
- (c) the date, amount, and nature of each settlement that—
- (i) is not the provision to the trustee, at less than market value, of minor services incidental to the activities of the trust; and
- (ii) is made on the trust in the return year; 20
- (d) the name, email address, ~~residential~~ physical residential or business address, ~~country~~ jurisdiction of tax residence, and taxpayer identification number of each settlor making the settlement:
- (e) ~~the date and amount~~ the date, amount, and nature of each distribution made by the trustee of the trust in the return year and the name of the beneficiary who receives the distribution; 25
- (f) ~~the name, email address, residential address, country of tax residence, and taxpayer identification number of each beneficiary to which the distribution is made.~~
- (f) for each beneficiary to which a distribution is made, the email address, physical residential address, jurisdiction of tax residence, and taxpayer identification number of the beneficiary or, if the beneficiary is a minor, the age, jurisdiction of tax residence, and tax identification number of the beneficiary and the name, email address, physical residential address, jurisdiction of tax residence and taxpayer identification number of the parent or guardian of the beneficiary. 30
- (3) A return and the prescribed fee for a foreign trust and a return year must be provided by a resident foreign trustee to the Commissioner by—
- (a) the date that is ~~3 months~~ 6 months after the balance date for the trust and the return year, if the trust has a balance date; or 40

- (b) the ~~30 June~~ 30 September following the end of the return year, if the trust does not have a balance date.

**59E Fees: regulations and exemption**

- (1) The Governor-General may from time to time, by Order in Council, make regulations prescribing ~~both~~— 5
- (a) the fee for an application for the registration of a foreign trust:
- (b) the fee for an annual return for a foreign trust.
- (2) A regulation made under **subsection (1)** may set out the period for which a fee prescribed by the regulations is to apply.
- (3) Until the commencement of the first regulation made under **subsection (1)**,— 10
- (a) the prescribed fee for an application for the registration of a foreign trust is \$270 inclusive of goods and services tax:
- (b) the prescribed fee for an annual return for a foreign trust and a return year is \$50 inclusive of goods and services tax.
- (4) **Subsection (3)** and this subsection are repealed when that first regulation commences. 15
- (5) A resident foreign trustee for a foreign trust is not required to pay a fee referred to in **subsection (1)** if each resident foreign trustee for the foreign trust—
- (a) is a natural person; and
- (b) is not in the business of providing trustee services. 20

**11 Section 81 amended (Officers to maintain secrecy)**

After section 81(4)(y), insert:

- (z) communicating to a person who is a member of the New Zealand Police or an officer, employee, or agent of the Department of Internal Affairs any information relating to a registration, or absence of registration, for a foreign trust that the person is authorised by the Commissioner of Police or the chief executive of the Department of Internal Affairs to receive. 25

**11B Section 89C amended (Notices of proposed adjustment required to be issued by Commissioner)**

After section 89C(1), insert: 30

- (lba) the assessment is of a penalty under **section 142H or 142I**; or

**11C Section 89P amended (Challenge notice for taxpayer-initiated disputes)**

After section 89P(2), insert:

- (2B) Despite subsection (1), the Commissioner does not have to issue a challenge notice in response to a notice of proposed adjustment for a penalty under **section 142H or 142I**. 35

**12 New heading and sections 91AAU to 91AAW inserted**

After section 91AAT, insert:

*Determinations relating to foreign account information-sharing agreements*

**91AAU Participating jurisdictions for CRS applied standard**

- (1) The Commissioner may determine that a territory outside New Zealand is a participating jurisdiction for the purposes of the CRS applied standard and Part 11B. 5
- (2) The determination may set out the period for which it is to apply, which must ~~begin after 31 March 2017~~, not begin before the latest reporting period that finishes before the determination is made. 10
- (3) ~~The A~~ determination may provide for the change, extension, limitation, suspension, or cancellation of an earlier determination.
- (4) Within 30 days of issuing, changing, extending, limiting, suspending, or cancelling a determination under this section, the Commissioner must publish in a publication chosen by the Commissioner— 15
  - (a) the determination:
  - (b) details of a changed, extended, limited, suspended, or cancelled determination.

**91AAV Suspension of reportable jurisdictions for CRS applied standard**

- (1) The Commissioner may ~~make a determination, relating to~~ determine, for a territory outside New Zealand that has been provided by an Order in Council to be a reportable jurisdiction for the purposes of the CRS applied standard and requirements imposed by Part 11B, that the territory is not to be treated as a reportable jurisdiction. 20
- (2) The determination must set out the period for which it is to apply, which must ~~begin after 31 March 2017 and~~ not begin before the latest reporting period that finishes before the determination is made and must end no more than 3 months after the date of the determination. 25
- (3) Within 30 days of issuing a determination under this section, the Commissioner must publish the determination in a publication chosen by the Commissioner. 30

**91AAW Non-reporting financial institutions and excluded accounts for CRS applied standard**

- (1) The Commissioner may determine that, for the purposes of the CRS applied standard and requirements under Part 11B,—
  - (a) a financial institution, or type of financial institution, is a non-reporting financial institution: 35
  - (b) a financial account, or type of financial account, is an excluded account.

- (2) The determination may set out the period for which it is to apply, which must ~~begin after 31 March 2017~~ not begin before the latest reporting period that finishes before the determination is made.
- (3) ~~The A~~ determination may provide for the change, extension, limitation, suspension, or cancellation of an earlier determination. 5
- (4) Within 30 days of issuing, changing, extending, limiting, suspending, or cancelling a determination under this section, the Commissioner must publish in a publication chosen by the Commissioner—
  - (a) the determination:
  - (b) details of a changed, extended, limited, suspended, or cancelled determination. 10

**12B Section 94A amended (Assessment of shortfall penalties)**

In section 94A(1), replace “civil penalty” with “civil penalty other than under section 142H or 142I”.

**12C New section 94C inserted (Assessment of penalties under sections 142H and 142I)** 15

After section 94B, insert:

**94C Assessment of penalties under sections 142H and 142I**

- (1) The Commissioner may, for a financial institution having obligations under Part 11B for financial accounts maintained by the financial institution, make an assessment of the amount of a penalty under **section 142H** that, in the Commissioner’s judgement, ought to be imposed and the financial institution is liable to pay the penalty assessed, except so far as the financial institution establishes in proceedings challenging the assessment that the assessment is excessive or that the financial institution is not chargeable with the penalty. 20  
25
- (2) The Commissioner may, for a person or entity having obligations under Part 11B for the provision of information relating to a person or entity for a financial account, make an assessment of the amount of a penalty under **section 142I** that, in the Commissioner’s judgement, ought to be imposed and the person or entity is liable to pay the penalty assessed, except so far as the person or entity establishes in proceedings challenging the assessment that the assessment is excessive or that the person or entity is not chargeable with the penalty. 30

**13 New sections 142H and 142I inserted**

After section 142G, insert:

**142H Failures of financial institutions to meet requirements under Part 11B and CRS applied standard** 35

- (1) If a financial institution fails to meet a requirement under Part 11B and the CRS applied standard for financial accounts maintained by the financial institu-

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- tion, other than a requirement referred to in **subsection (3)**, the financial institution is liable to pay a penalty of \$300 for each failure to which **subsection (2)** does not apply and for which no penalty under **subsection (5)** is imposed.
- (2) ~~A financial institution is not liable to pay a penalty under **subsection (4)** for a failure that occurs before 1 April 2019 if the Commissioner is satisfied that the financial institution makes reasonable efforts to meet the requirement and reasonable efforts to correct the failure within a reasonable period after the financial institution becomes aware of the failure.~~ 5
- (2) A financial institution is not liable to pay a penalty under **subsection (1)** for a failure that— 10
- (a) the financial institution proves is due to circumstances outside the control of the financial institution;
- (b) occurs before 1 July 2019, if the Commissioner is satisfied that the financial institution makes reasonable efforts to meet the requirement and reasonable efforts to correct the failure within a reasonable period of time after the financial institution becomes aware of the failure. 15
- (3) If a financial institution fails to meet a requirement under Part 11B and the CRS applied standard to obtain self-certifications when opening a financial account, the financial institution is liable to pay a penalty of \$300 for each account if **subsection (4)** does not apply to the failure and no penalty under **subsection (5)** is imposed for the failure. 20
- (4) A financial institution is not liable to pay a penalty under **subsection (3)** for a failure that occurs before ~~1 April 2019~~ 1 July 2019 for an account if the Commissioner is satisfied that the financial institution makes reasonable efforts to meet the requirement and makes reasonable efforts to correct the failure for the account within a reasonable period of time after the financial institution becomes aware of the failure. 25
- (5) If a financial institution fails to take reasonable care to meet a requirement of a financial institution under Part 11B and the CRS applied standard for financial accounts, and no penalty under **subsections (1) and (3)** is imposed for the failure, the financial institution is liable to pay a penalty of— 30
- (a) \$20,000 for the first failure;
- (b) \$40,000 for each further failure.
- (6) The total amount of penalties for a reporting period for which a financial institution is liable must not exceed— 35
- (a) \$10,000, for penalties under **subsections (1) and (3)**;
- (b) \$100,000, for penalties under **subsection (5)**.

**142I Failures to meet requirements under Part 11B to provide information ~~or~~, including self-certifications**

- (1) This section applies to a person or entity (the **information provider**) required under Part 11B to provide information, ~~or including~~ a self-certification, relating to a person or entity for a financial account. 5
- (2) The information provider is liable to pay a penalty of \$1,000 if the information provider—
  - (a) provides false information, other than a self-certification, relating to the information provider:
  - (b) signs or otherwise affirms a false self-certification for the information provider: 10
  - (c) provides false information, other than a self-certification, relating to another person or entity:
  - (d) provides a false self-certification for another person or entity:
  - (e) fails to provide information, other than a self-certification, relating to the information provider within a reasonable time after receiving a request for which the information is required to be provided: 15
  - (f) fails to sign, or otherwise affirm, and provide a self-certification relating to the information provider within a reasonable time after receiving a request for which the self-certification is required to be provided: 20
  - (g) fails to provide information, other than a self-certification, relating to another person or entity within a reasonable time after receiving a request for which the information is required to be provided:
  - (h) fails to provide a self-certification relating to another person or entity within a reasonable time after receiving a request obliging the self-certification to be provided: 25
  - (i) after providing a person or entity with a self-certification or other information, fails to inform the person or entity of a material change in the circumstances relating to the self-certification or information within a reasonable time after the information provider becomes aware of the change. 30
- (3) An information provider is not liable to pay a penalty under **subsection (2)** for a failure to provide information, ~~or including~~ a self-certification, within the control of the information provider, if the Commissioner is satisfied that the failure occurred through no fault of the information provider. 35
- (4) An information provider is not liable to pay a penalty under **subsection (2)** for a failure to provide information, ~~or including~~ a self-certification, relating to another person or entity and not within the control of the information provider, if the Commissioner is satisfied that the information provider makes reasonable efforts to meet the requirement. 40

**14 Section 143 amended (Absolute liability offences)**

After section 143(2B), insert:

- (2C) No person may be convicted of an offence against subsection (1) if the requirement with which the person fails to comply is a requirement under the CRS applied standard and Part 11B.

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**15 Section 143A amended (Knowledge offences)**

(1) After section 143A(1)(ab), insert:

- (ac) knowingly fails to provide ~~a self-certification~~ information, including a self-certification, to another person when required to do so under Part 11B; or

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(2) In section 143A(2), in the words before paragraph (a),—

- (a) after “offence against”, insert “**subsection (1)(ac)** for knowingly failing to provide ~~a self-certification~~ information, including a self-certification, to another person or against”;
- (b) delete “by the Commissioner”.

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**16 Section 185E amended (Purpose)**

In section 185E, insert as subsections (2) to (4):

- (2) Sections 185F to 185M impose requirements on a person relating to information that is the subject of the FATCA agreement.
- (3) **Sections 185N and 185O** impose requirements on a person relating to information that is the subject of the CRS applied standard.
- (4) **Sections 185P to 185R** impose requirements on a person relating to either of the FATCA agreement and the CRS applied standard.

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**17 New heading inserted after section 185E**

After section 185E, insert as a heading “*FATCA agreement*”.

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**18 Section 185F amended (Permitted choices in relation to foreign account information-sharing agreements)**

- (1) In section 185F, heading, replace “**foreign account information-sharing agreements**” with “**FATCA agreement**”.
- (2) In section 185F(1), replace “a foreign account information-sharing agreement” with “the FATCA agreement”.

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**19 Section 185G amended (Obligations related to foreign account information-sharing agreements: registration)**

- (1) In section 185G, heading, replace “**foreign account information-sharing agreements**” with “**FATCA agreement**”.

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(2)	In section 185G, replace “a foreign account information-sharing agreement” with “the FATCA agreement”.	
<b>20</b>	<b>Section 185H amended (Obligations related to foreign account information-sharing agreements: due diligence)</b>	
(1)	In section 185H, heading, replace “ <b>foreign account information-sharing agreements</b> ” with “ <b>FATCA agreement</b> ”.	5
(2)	In section 185H, replace “a foreign account information-sharing agreement” with “the FATCA agreement”.	
<b>21</b>	<b>Section 185I amended (Obligations related to foreign account information-sharing agreements: information for NZ competent authority)</b>	10
(1)	In section 185I, heading, replace “ <b>foreign account information-sharing agreements</b> ” with “ <b>FATCA agreement</b> ”.	
(2)	In section 185I(1), replace “a foreign account information-sharing agreement” with “the FATCA agreement”.	
<b>22</b>	<b>Section 185J amended (Obligations related to foreign account information-sharing agreements: information for third parties)</b>	15
(1)	In section 185J, heading, replace “ <b>foreign account information-sharing agreements</b> ” with “ <b>FATCA agreement</b> ”.	
(2)	In section 185J(1), replace “a foreign account information-sharing agreement” with “the FATCA agreement”.	20
<b>23</b>	<b>Section 185L repealed (Foreign account information-sharing agreements: anti-avoidance)</b>	
	Repeal section 185L.	
<b>24</b>	<b>New headings and sections 185N to 185R inserted</b>	
(1)	After section 185M, insert:	25
	<del><i>Multilateral convention and CRS standard</i></del>	
	<b>185N Requirements for financial institution</b>	
(1)	A financial institution must comply with this section for a period in which the financial institution is—	
	(a) resident in New Zealand under the CRS applied standard:	30
	(b) a branch located in New Zealand under the CRS applied standard.	
(2)	For the purposes of <b>subsection (1)</b> , the requirements for a financial institution that is resident in New Zealand do not include requirements for a branch of the financial institution that is not located in New Zealand.	
<del>(3)</del>	<del>The financial institution must, for each reporting period,—</del>	35

- (a) ~~perform the due diligence procedures required by the CRS applied standard for each financial account that is maintained by the financial institution in the reporting period; and~~
- (b) ~~obtain the documents and information, for each financial account, that the CRS applied standard requires the financial institution to obtain; and~~ 5
- (c) ~~obtain, as part of the due diligence procedures for each new financial account, for each account holder or controlling person identified by the financial institution as being a resident of a foreign jurisdiction,—~~
- (i) ~~the date of birth for an individual; and~~
- (ii) ~~the taxpayer identification number (TIN), if the foreign jurisdiction issues a TIN and has domestic law requiring that the TIN be collected; and~~ 10
- (d) ~~give to the Commissioner a report of the information that this Part requires the financial institution to provide to the competent authority.~~
- (3) The financial institution must, for each reporting period and each financial account that is maintained by the financial institution in the reporting period,— 15
- (a) perform the due diligence procedures, and obtain the information, required by the CRS applied standard; and
- (b) for each new financial account, obtain the information referred to in **subsection (3B)** for each account holder or controlling person identified by the financial institution as being— 20
- (i) a resident of a foreign jurisdiction other than a reportable jurisdiction; and
- (ii) a person or entity who would be a reportable person if the foreign jurisdiction were a reportable jurisdiction. 25
- (3B) The information required under **subsection (3)(b)** to be obtained for an account holder or controlling person is—
- (i) the date of birth for an individual; and
- (ii) the taxpayer identification number issued by the foreign jurisdiction for the person or entity, except if the domestic law of the foreign jurisdiction does not require the collection of the TIN. 30
- (3C) The financial institution must, for each reporting period, give to the Commissioner a report of the information that the CRS applied standard and **subsection (8)** require the financial institution to provide to the competent authority.
- (4) The report by the financial institution for a reporting period must be given to the Commissioner by the 30 June following the 31 March that is the end of the reporting period, except as given by **subsection (5)**. 35
- (5) The first report by the financial institution for information with respect to a financial account that is maintained by a financial institution in a ~~reportable~~ reporting period must be given to the Commissioner by— 40

- (a) 30 June 2018, if the financial account is identified before that date as being a reportable account that is a pre-existing individual account and a high value account:
- (b) 30 June 2019, if the financial account is identified before that date as being a reportable account that is a pre-existing entity account or that is a pre-existing individual account and a lower value account. 5
- (5B)** For the purposes of this section, a financial account is not an undocumented account except in a situation described in Section III, subparagraph (B)(5) or (C)(5)(c) of the CRS applied standard.
- (6) In determining the aggregate balance or value of financial accounts, the financial institution must apply the rules in Section VII, subparagraph C(1) to (3) of the CRS applied standard. 10
- (7) The financial institution may choose that the reporting requirements given by the CRS applied standard for financial accounts held or controlled by a resident of a reportable jurisdiction apply to all financial accounts maintained by the financial institution and held or controlled by a resident of a foreign jurisdiction. 15
- (8) A financial institution that makes the election referred to in **subsection (7)** must ~~make reports that are consistent~~ comply with the chosen reporting requirements in each report for a reporting period.
- (9) A financial institution that chooses to review ~~all pre-existing entity accounts~~ pre-existing entity accounts, whether all such accounts or a clearly identified group of such accounts, must complete the review by the date given in Section V, subparagraph D(1) of the CRS applied standard for completion of the review of pre-existing entity accounts with the specified aggregate account balance or value. 20  
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- (10) A financial institution that chooses to treat a discretionary beneficiary of a trust as not being a controlling person for the trust until the beneficiary receives a distribution must have reasonable safeguards and procedures for identifying when a distribution is made to the beneficiary.
- (11) The financial institution is not permitted to choose for a report for a reporting period— 30
- (a) to use a reporting period other than a period ending with ~~a~~ 31 March:
- (b) to give the average balance of a financial account for a reporting period as being the balance for the financial account for the reporting period.
- (12) ~~The report~~ A report for a reporting period must be in the prescribed electronic format. 35
- 1850 Application of Common Reporting Standard**
- (1) This section provides for the application of the CRS standard in determining the requirements for a person or entity under the Inland Revenue Acts.

- (2) The CRS standard is modified for the purposes of determining the requirements for a person or entity under the Inland Revenue Acts in the ways specified in **schedule 2**.
- (3) The CRS standard is treated as applying at a time—
- (a) as modified by **subsection (2)**; and
  - (b) consistently with the Commentary on the CRS standard contained in Part IIIB of the CRS publication, as amended at the time.
- (4) In the application of the CRS standard at a time, a term defined in the CRS standard ~~or the MCMAA convention~~ and used in the Inland Revenue Acts has the meaning that it has at the time under the CRS standard ~~or the MCMAA convention~~, as modified by **subsection (2)**.
- (5) A person or entity may make an election that is ~~expressed as being available to a person or entity, consistent with the CRS standard~~ if the election is not contrary to ~~this Act and not otherwise contrary to the law of New Zealand~~ the Inland Revenue Acts.
- (6) A person or entity that makes an election referred to in **subsection (5)** must meet the requirements of the CRS applied standard consistently with the election.

*Foreign account information-sharing agreements generally*

**185P Requirements for persons to provide information to financial institution**

- (1) This section applies to a person or entity ~~associated~~ connected with a financial account if the financial institution that maintains the financial account is required under the FATCA agreement or CRS applied standard (the **account requirements**) to perform due diligence for the financial account.
- (2) When a financial institution requests a person or entity (the **institution contact**) to provide information ~~or a self-certification~~ that the financial institution is required to obtain under the account requirements for the financial account, the institution contact must—
- (a) provide to the financial institution the required information ~~or self-certification~~ for the institution contact; and
  - (b) make reasonable efforts to obtain the required information ~~or self-certification~~ for each other person or entity ~~associated~~ connected with the financial account, and provide the information ~~and self-certifications~~ to the financial institution.
- (3) When a person or entity ~~associated~~ connected with the financial account (the **secondary contact**) is asked by an institution contact or other person or entity (the **requesting person**) to provide information ~~or self-certifications~~ related to the financial account and referred to in **subsection (2)(b)**, the secondary contact must—

- (a) provide the requesting person with the required information ~~or self-certification~~ for the secondary contact; and
  - (b) make reasonable efforts to obtain the required information ~~or self-certification~~ for each other person or entity ~~associated~~ connected with the financial account and the secondary contact, and provide the information ~~and self-certifications~~ to the requesting person. 5
- ~~(4) If a person or entity provides information or a self-certification to another person or entity as required by this section, the person or entity must inform the other person or entity of any material change in circumstances affecting that information or self-certification within a reasonable time of becoming aware of the material change. 10~~
- (4) If a person or entity provides information to another person or entity as required by this section, the person or entity must, within a reasonable time of becoming aware of a material change in circumstances affecting that information, provide details of the material change to— 15
- (a) the other person or entity, if the other person or entity is still connected with the financial account and responsible as a requesting person for the information; or
  - (b) the financial institution, if **paragraph (a)** does not apply.
- 185Q Requirements and penalties for entities that are not persons 20**
- (1) If the FATCA agreement or CRS applied standard, or a related provision in this Act, is expressed as imposing a requirement or penalty on an entity that is not a person, the meeting of the requirement or the payment of the penalty for the entity is treated as being a joint and several requirement,—
    - (a) if the entity is a trust, for each trustee: 25
    - (b) if the entity is a partnership, for each partner:
    - (c) if the entity is a joint venture, for each member of the joint venture:
    - (d) if the entity is a legal relationship between persons or entities that is not referred to in **paragraphs (a) to (c)**, for each person or entity in the relationship. 30
  - (2) If the FATCA agreement or CRS applied standard, or a related provision in this Act is expressed as requiring information to be provided to an entity that is not a person, the requirement is treated as being to provide the information to the persons given for the entity by **subsection (1)(a) to (d)**.
- 185R Foreign account information-sharing agreements: anti-avoidance 35**
- (1) If a main purpose of a person in entering an arrangement is to avoid a requirement under this Part, the arrangement is treated as having no effect in relation to the person's requirements under this Part.

- (2) The person has the requirements under this Part that the Commissioner considers to be appropriate in the absence of the arrangement.
- (2) ~~**Subsection (1)**~~ This section applies for arrangements affecting the requirements of a person under this Part for a reporting period ending after 31 March 2017.

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~~25 **New section 226D inserted (Reportable jurisdictions for CRS standard and Part 11B)**~~ **New sections 226D and 226E inserted**

After section 226C, insert:

**226D Reportable jurisdictions for CRS standard and Part 11B**

- (1) The Governor-General may from time to time, by Order in Council, make regulations providing that a territory outside New Zealand is a reportable jurisdiction for the purposes of the CRS applied standard.
- (2) A regulation may set out the period for which it is to apply, which must ~~begin after 31 March 2017~~ not begin before the latest reporting period that finishes before the regulation is made.
- (3) A regulation may provide for the change, extension, limitation, suspension, or cancellation of an earlier regulation.
- (4) Within 30 days of the making of a regulation under this section, the Commissioner must publish in a publication chosen by the Commissioner—
- (a) the new or changed regulation:
- (b) details of the extension, limitation, suspension, or cancellation of the regulation.
- (5) The effect of a regulation providing that a territory outside New Zealand is a reportable jurisdiction may be suspended by a determination made by the Commissioner under **section 91AAV**.

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**226E Application of changes to CRS standard**

- (1) The Governor-General may from time to time, by Order in Council, make regulations relating to a change in the CRS standard or the CRS publication providing for—
- (a) the effect or lack of effect of the change on the CRS applied standard:
- (b) a period for which an effect or lack of effect applies or does not apply:
- (c) the effect or lack of effect of a change to the CRS applied standard on the obligations and liabilities of a person or entity or class of persons or entities.
- (2) A regulation may set out the period for which it is to apply, which must not begin before the latest reporting period that finishes before the regulation is made.

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- (3) A regulation may provide for the change, extension, limitation, suspension, or cancellation of an earlier regulation.
- (4) Within 30 days of the making of a regulation under this section, the Commissioner must publish in a publication chosen by the Commissioner—
  - (a) the new or changed regulation;
  - (b) details of the extension, limitation, suspension, or cancellation of the regulation.

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**26 New schedule 2 inserted (Application of CRS standard)**

After the schedule in the Tax Administration Act 1994, insert the schedule 2 set out in the ~~schedule 4~~ of this Act.

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**Part 2**

**Business tax: AIM provisional tax method**

Subpart 1—Amendments to Income Tax Act 2007

**27 Income Tax Act 2007 amended**

**This subpart** amends the Income Tax Act 2007.

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**28 Section LA 6 amended (Remaining refundable credits: PAYE, RWT, and certain other items)**

(1) After section LA 6(2)(d), insert:

(db) ~~sixth~~fifth, if the person is a company and uses the AIM method for provisional tax, transfer a tax credit to a shareholder of the company of the amount described in **subsection (2C)**. The amount transferred does not give rise to a tax credit, but is treated as a transferred amount for the shareholder for the purposes of Part 7 of the Tax Administration Act 1994, for the tax year that the tax credit relates to, as provided by **section 120LB** of that Act. The amount is also treated as a refund of income tax paid to the company for the purposes of section OB 32 (ICA refund of income tax):

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(2) In section LA 6(2)(e), replace “fifth” with “~~seventh~~sixth”.

(3) Before section LA 6(3), insert:

*AIM method amount*

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(2C) The amount must not be more than the least of the following:

- (a) the amount chosen by the company; and
- (b) ~~the amount of the shareholder’s tax credit under **section LB 2** for the tax year less the shareholder’s residual income tax for the tax year, treating a negative amount as zero; and~~

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<p>(b) <u>the shareholder’s residual income tax for the tax year, less the amount of the shareholder’s tax credit under <b>section LB 2</b> for the tax year, treating a negative amount as zero; and</u></p> <p>(c) the amount of the company’s tax credit under <b>section LB 2</b> for the tax year less its residual income tax for the tax year, treating a negative amount as zero.</p>	5
<p>(4) In section LA 6, in the list of defined terms insert “company”, “income tax”, “residual income tax”, and “shareholder”.</p>	
<p><b>29 Section RA 14 amended (Payment dates for provisional tax)</b></p>	
<p>(1) In section RA 14, replace “F” with “F1”.</p> <p>(2) This section applies for the 2018–19 and later income years.</p>	10
<p><b>30 Section RC 1 amended (What this subpart does)</b></p>	
<p>(1) In section RC 1(2) replace “the letters A to F” with “the alphanumeric designations A to F1”.</p> <p>(2) This section applies for the 2018–19 and later income years.</p>	15
<p><b>31 Section RC 5 amended (Methods for calculating provisional tax liability)</b></p>	
<p>(1) After section RC 5(5), insert:</p>	
<p><i>AIM method</i></p>	
<p>(5B) A person must use the AIM method under <b>section RC 7B</b> to determine their provisional tax liability for the tax year (the <b>current tax year</b>), <u>other than a transitional year</u>, if the person—</p> <p>(a) has chosen to use the AIM method for the current tax year <u>on or before the first instalment date for them under the AIM method, and the current tax year is not a transitional year</u>; and</p> <p>(b) has an AIM-capable accounting system that is up-to-date for <u>relevant tax law</u> for the corresponding income year and for determinations under <b>section 91AAX</b> of the Tax Administration Act 1994 for the corresponding income year; and</p> <p>(c) has—</p> <p style="margin-left: 20px;">(i) annual gross income of \$5,000,000 or less for the tax year before the current tax year;</p> <p style="margin-left: 20px;">(ii) annual gross income of \$5,000,000 or less for the first tax year for which the person used the AIM method, and the Commissioner has approved under <b>section 15Z45D</b> of the Tax Administration Act 1994 the person’s continued use of an AIM-capable accounting system for tax years in which the person has annual gross income of more than \$5,000,000;</p> <p style="margin-left: 20px;">(iii) a large business AIM-capable system; and</p>	20
<p style="margin-left: 20px;">30</p> <p style="margin-left: 20px;">25</p> <p style="margin-left: 20px;">30</p> <p style="margin-left: 20px;">35</p>	

<p>(d) has not been liable, in 1 of the last 4 tax years before the current tax year, for a shortfall penalty in relation to their use of the AIM method and an approved AIM provider’s AIM-capable accounting system; and</p> <p>(e) has not <del>consistently and systematically</del> returned tax liabilities using the AIM method <u>with the sole purpose or effect of consistently, year-on-year, reducing their tax liabilities below the amounts of reasonably accurate assessments</u><del>that are inaccurate assessments of their tax liabilities</del>; and</p> <p>(f) is not a member of a class of taxpayers that the Commissioner has determined, under <b>section 91AAY</b> of the Tax Administration Act 1994, must not use the AIM method; and</p> <p>(g) for the current tax year, has not failed more than twice to give the Commissioner information in the prescribed form, as provided by <b>section 45</b> of the Tax Administration Act 1994.</p> <p><i>AIM method: exception</i></p> <p>(5C) A person who does not meet the requirements of <b>subsection (5B)</b> can not use the AIM method for the current tax year. If they can not use the AIM method for the current year because part-way through the corresponding income year the person stops meeting the requirements of <b>subsection (5B)</b>, the person is treated as using the estimation method for the whole of the current tax year.</p> <p>(2) In section RC 5, in the list of defined terms, insert “AIM-capable accounting system”, “annual gross income”, “instalment date”, “large business AIM-capable system”, “shortfall penalty”, <del>and</del> “taxpayer”, <u>and “transitional year”</u>.</p> <p>(3) This section applies for the 2018–19 and later income years.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p>
<p><b>32 New section RC 7B inserted (AIM method)</b></p>	
<p>(1) After section RC 7, insert:</p>	
<p><b>RC 7B AIM method</b></p>	
<p><i>When this section applies</i></p>	
<p>(1) This section applies to—</p> <p>(a) a person who meets the requirements of <b>section RC 5(5B)</b>; and</p> <p>(b) the calculation of the amount of provisional tax payable for a tax year, <u>other than a transitional year</u>, under the AIM method.</p> <p><i>AIM method</i></p> <p>(2) A person must use an AIM-capable accounting system for the calculation of provisional tax payable for a tax year.</p>	<p>30</p> <p>35</p>

*Meaning of AIM-capable accounting system*

- (3) **AIM-capable accounting system** means a double-entry accounting system that is an approved AIM provider's product, and uses a core software package from an approved AIM provider, if the system has the following features:
- (a) a core software accounting package and connected packages that provides the ability to—
- (i) generate and keep comprehensive financial accounts, including accounting income and expenditure, ledger accounts, trial balances, bank account reconciliations, and journals, on an on-demand basis, in accordance with good accounting and tax practice; and
- (ii) calculate tax liabilities for the tax year using tax adjustments for the financial accounts, in accordance with a determination under **section 91AAX** of the Tax Administration Act 1994 (a **section 91AAX determination**), and using tax rates under a **section 91AAX determination**; and
- (iii) for amounts for which there is no tax adjustment under a **section 91AAX determination** not covered by a determination under ~~sub-paragraph (ii)~~, calculate tax liabilities for the tax year using tax rates under a **section 91AAX determination**, and using tax adjustments for the financial accounts that result in reasonably accurate assessments of tax liabilities for a person; and
- (iv) recalculate all financial accounts and tax liabilities, if retrospective adjustments are required for the year to date; and
- (v) produce reports and other information as required by the Commissioner, in formats prescribed by the Commissioner; and
- (b) electronic communication facilities for—
- (i) giving information in the form prescribed by the Commissioner; and
- (ii) sending and receiving messages and notifications; and
- (c) help documentation for end-users and their tax agents on the use of the package, with ongoing support provided by the approved AIM provider on the use of the package.

Defined in this Act: AIM-capable accounting system, approved AIM provider, Commissioner, person, provisional tax, tax agent, tax year

- (2) This section applies for the 2018–19 and later income years.

**33 Section RC 9 amended (Provisional tax payable in instalments)**

- (1) After section RC 9(4)(b), insert:

(bb) to a person that uses the AIM method for the tax year:

- (2) After section RC 9(4), insert:

*AIM method*

(4B) A person liable to pay provisional tax who uses the AIM method for the current tax year must pay provisional tax—

- (a) if the person is not registered for GST, or has a 6-month taxable period under section 15 of the Goods and Services Tax Act 1985, on the 6 instalment dates in the months set out in schedule 3, part A, columns A, B, C, D, E, and F for their balance date. The amount of each instalment is provided by **section RC 10B**; or
- (b) if the person has a 2-month taxable period under section 15 of the Goods and Services Tax Act 1985, on the group of 6 instalment dates in the months set out in either schedule 3, part A, columns A, B, C, D, E, and F or in schedule 3, part A, columns A1, B1, C1, D1, E1, and F1 that corresponds to the due dates for their GST returns. The amount of each instalment is provided by **section RC 10B**; or
- (c) if the person has a 1-month taxable period under section 15 of the Goods and Services Tax Act 1985, on the 12 instalment dates in the months set out in schedule 3, part A, columns A to F1 for their corresponding income year. The amount of each instalment is provided by **section RC 10B**.

(3) In section RC 9(6), replace “columns A to F” with “columns A, B, C, D, E, and F”.

(4) ~~In section RC 9, in table R1, after the row labelled “Estimation RC 5(5)”, insert the following row:~~

<del>AIM</del>	<del>2 month</del>	<del>RC 7B</del>	<del>6: RC</del>	<del>A, B, C, D, E,</del>	<del>RC 10B</del>	<del>120K</del>
<del>RC 5(5B)</del>	<del>1 month</del>	<del>RC 7B</del>	<del>9(4B)(a)</del>	<del>and F</del>	<del>RC 10B</del>	<del>BC</del>
			<del>12: RC</del>	<del>A to F1</del>		<del>120K</del>
			<del>9(4B)(b)</del>			<del>BC</del>

(5) ~~In section RC 9, in table R1, in the row labelled “GST ratio RC 5(6)”, replace “A to F” with “A, B, C, D, E, and F” in both places in which it appears.~~

(6) This section applies for the 2018–19 and later income years.

**33B Table R1 amended (Summary of instalment dates and calculation methods for provisional tax)**

(1) In section RC 9, in table R1, after the row labelled “Estimation RC 5(5)”, insert the following row:

<u>AIM</u>	<u>2 month</u>	<u>RC 7B</u>	<u>6: RC</u>	<u>A, B, C, D, E,</u>	<u>RC 10B</u>	<u>120K</u>
<u>RC 5(5B)</u>	<u>1 month</u>	<u>RC 7B</u>	<u>9(4B)(a)</u>	<u>and F, or A1, B1,</u>	<u>RC 10B</u>	<u>BC</u>
			<u>and (b)</u>	<u>C1, D1, E1, F1</u>		<u>120K</u>
			<u>12: RC</u>	<u>A to F1</u>		<u>BC</u>
			<u>9(4B)(c)</u>			

- (2) In section RC 9, in table R1, in the row labelled “GST ratio RC 5(6)”, replace “A to F” with “A, B, C, D, E, and F” in each place where it appears.
- (3) This section applies for the 2018–19 and later income years.
- 34 New section RC 10B inserted (Calculating amount of instalment for periods using AIM method) 5**
- (1) After section RC 10, insert:
- RC 10B Calculating amount of instalment for periods using AIM method**
- For a person who uses the AIM method, the amount of provisional tax payable on an instalment date for a tax year is the amount calculated using an AIM-capable accounting system for the 2-monthly or monthly period given by **schedule 3, part AB** (Payment of provisional tax and terminal tax) for the applicable instalment date. 10
- Defined in this Act: AIM-capable accounting system, instalment date, person, provisional tax
- (2) This section applies for the 2018–19 and later income years.
- 35 Section RC 24 amended (Calculating instalments in transitional years: GST ratio method) 15**
- (1) In section RC 24(2), replace “instalments A to F” with “instalments A, B, C, D, E, and F”.
- (2) This section applies for the 2018–19 and later income years.
- 36 New section RM 6B inserted (Refunds for overpaid AIM method instalments) 20**
- (1) Before section RM 7, insert:
- RM 6B Refunds for overpaid AIM method instalments**
- Refund*
- (1) The Commissioner must refund to a person the amount given by the formula in **subsection (2)**, if the person uses the AIM method for a tax year and gives the Commissioner the required information in the form prescribed under **section 45** of the Tax Administration Act 1994 (the **form**). 25
- Formula*
- (2) For the purposes of **subsection (1)** the refund amount is— 30
- AIM payments year to date – AIM year to date.
- Definition of items in formula*
- (3) In the formula—
- (a) **AIM payments year to date** means the amount of provisional tax paid by the person for the tax year on and before the last day of the instalment period that the form relates to: 35

<p>(b) <b>AIM year to date</b> means the amount of provisional tax liability that the person would have if the AIM method was applied for the period starting at the beginning of the tax year and finishing on the last day of the instalment period that the form relates to.</p> <p>Defined in this Act: Commissioner, instalment date, provisional tax, tax year</p> <p>(2) This section applies for the 2018–19 and later income years.</p> <p><b>36B RM 13 amended (Limits on refunds for ICA companies)</b></p> <p>(1) <u>In section RM 13(1)(a), replace “RM 5” with “RM 5, other than a refund of provisional tax paid under the AIM method”.</u></p> <p>(2) <u>In section RM 13(1)(b), replace “companies)” with “companies), other than a transfer of provisional tax paid under the AIM method”.</u></p> <p>(3) <u>This section applies for the 2018–19 and later income years.</u></p> <p><b>37 Section RP 17 amended (Tax pooling intermediaries)</b></p> <p>(1) In section RP 17(1)(a), replace “provisional tax” with “provisional tax other than under the AIM method”.</p> <p>(2) This section applies for the 2018–19 and later income years.</p> <p><b>38 Section RP 17B amended (Tax pooling accounts and their use)</b></p> <p>(1) In section RP 17B(2)(a), replace “provisional tax” with “provisional tax other than under the AIM method”.</p> <p>(2) In section RP 17B(4), in the words before the paragraphs, replace “provisional tax” with “provisional tax other than under the AIM method”.</p> <p>(3) This section applies for the 2018–19 and later income years.</p> <p><b>39 Section RP 19B amended (Transfers for certain expected tax liabilities)</b></p> <p>(1) In section RP 19B(1)(a), replace “provisional tax liability” with “provisional tax liability other than under the AIM method”.</p> <p>(1B) <u>In section RP 19B(3)(b), replace “provisional tax liability” with “provisional tax liability other than under the AIM method”.</u></p> <p>(1C) <u>In section RP 19B(5)(a)(i), replace “provisional tax liability” with “provisional tax liability other than under the AIM method”.</u></p> <p>(2) This section applies for the 2018–19 and later income years.</p> <p><b>40 Section YA 1 amended (Definitions)</b></p> <p>(1) This section amends section YA 1.</p> <p>(2) Insert, in appropriate alphabetical order: <b>AIM-capable accounting system</b> is defined in <b>section RC 7B</b> (AIM method)</p> <p>(3) Insert, in appropriate alphabetical order:</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
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**approved AIM provider** means a person that the Commissioner has approved as an approved AIM provider under **section 15U** of the Tax Administration Act 1994, if the approval has not been revoked under **section 15V** of that Act

- (4) Insert, in appropriate alphabetical order:

**large business AIM-capable system** means an AIM-capable accounting system approved by the Commissioner under **section 45C** of the Tax Administration Act 1994 for use by an approved class of taxpayers with annual gross income of more than \$5,000,000

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**41 Schedule 3 amended (Payment of provisional tax and terminal tax)**

- (1) In schedule 3, in the shoulder references, insert “**RC 10B**”.

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- (2) In schedule 3, part A, replace the table with:

**Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill**

Part 2 cl 41

<b>Month of balance date</b>	<b>A</b>	<b>A1</b>	<b>B</b>	<b>B1</b>	<b>C</b>	<b>C1</b>	<b>D</b>	<b>D1</b>	<b>E</b>	<b>E1</b>	<b>F</b>	<b>F1</b>	<b>G</b>	<b>H</b>
October	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	Sep	Nov
November	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	Oct	Dec
December	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	Nov	Jan
January	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	Dec	Feb
February	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	Jan	Mar
March	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	Feb	Apr
April	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	Feb	Apr
May	28 Aug	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	Feb	Apr
June	28 Sep	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	Feb	Apr
July	28 Oct	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	Feb	Apr
August	28 Nov	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	Feb	Apr
September	15 Jan	28 Jan	28 Feb	28 Mar	7 May	28 May	28 Jun	28 Jul	28 Aug	28 Sep	28 Oct	28 Nov	Feb	Apr

(3) In schedule 3, after part A, insert:

**Part AB**  
**Calculation periods for AIM method**

Instalment date	6 instalments: 2-monthly period	12 instalments: monthly period
15 Jan	Oct, Nov	Nov
28 Jan	Nov, Dec	Dec
28 Feb	Dec, Jan	Jan
28 Mar	Jan, Feb	Feb
7 May	Feb, Mar	Mar
28 May	Mar, Apr	Apr
28 Jun	Apr, May	May
28 Jul	May, Jun	Jun
28 Aug	Jun, Jul	Jul
28 Sep	Jul, Aug	Aug
28 Oct	Aug, Sept	Sept
28 Nov	Sept, Oct	Oct

**How to use this table:**

Find the applicable instalment date in the first column, and use the period for that instalment in the second column if **section RC 9(4B)(a) or (b)** applies or use the period in the third column if **section RC 9(4B)(c)** applies.

- (4) This section applies for the 2018–19 and later income years.

Subpart 2—Amendments to Tax Administration Act 1994

**42 Tax Administration Act 1994 amended** 5

**This subpart** amends the Tax Administration Act 1994.

**43 Section 3 amended (Interpretation)**

- (1) In section 3(1), in the definition of **tax position**, after paragraph (k), insert:

(kb) the use of the AIM method for provisional tax and the software product of an approved AIM provider: 10

- (2) This section applies for the 2018–19 and later income years.

**44 New heading and sections 15U to 15XZ inserted**

- (1) After section 15T, insert:

~~*Approved AIM method providers*~~

**15U Approval of approved AIM providers** 15

The Commissioner may approve a person as an approved AIM provider in relation to 1 or more of the person’s AIM-capable accounting systems (the **products**), if approving the person would not negatively affect the integrity of the tax system and the person makes a statutory declaration of the following matters and gives it to the Commissioner, namely a declaration: 20

- (a) specifying the name of the products; and

(b) declaring that ~~the person's policy is to update the product regularly~~ the product is updated regularly, to reflect changes in tax law or Commissioner's requirements (for example: the software is updated to reflect a change in a determination by the Commissioner under **section 91AAX**); and

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(c) declaring any other matters required by the Commissioner to be declared for the purposes of assuring the Commissioner that the person's product accurately calculates and communicates, in accordance with the Commissioner's requirements, tax liabilities that are reasonably accurate assessments of tax liabilities for the relevant accounting income and expenditure.

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**15V Revocation of approval of AIM providers: Commissioner**

(1) The Commissioner's approval of a person as an approved AIM provider under **section 15U** is revoked if—

(a) anything in their statutory declaration under **section 15U** is not true, or does not continue to be true after it is made; or

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(b) revoking the approval positively affects the integrity of the tax system.

(2) A revocation under **subsection (1)** does not take effect until the tax year after the tax year in which the Commissioner has notified the approved AIM provider of the revocation.

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(3) The Commissioner must consult the approved AIM provider before the approval is revoked.

(4) The Commissioner may reverse a revocation before it takes effect, if the circumstances that gave rise to the revocation have been remedied by the approved AIM provider and there are no other circumstances requiring revocation under **subsection (1)**.

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**15W Revocation of approval of AIM providers: provider**

(1) The Commissioner's approval of a person as an approved AIM provider under **section 15U** is revoked if the person notifies the Commissioner of the person's choice to revoke the Commissioner's approval.

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(2) A revocation under **subsection (1)** does not take effect until the tax year after the tax year in which the Commissioner has received notification of the revocation.

(3) A person who has given notice under **subsection (1)** must immediately give notice of their choice to revoke to all end-users of the person's products that will be affected by the revocation.

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**15X Publication of approval, revocation, etc**

The Commissioner may publish a notice in a publication chosen by the Commissioner in relation to any matter in **sections 15U, 15V, and 15W**.

**15Y AIM method: approval of large business AIM-capable system**

For the purposes of **section RC 5(5B)(c)(iii)** and the definition of **large business AIM-capable system** in **section YA 1** of the Income Tax Act 2007, the Commissioner may approve an AIM-capable accounting system for use by a class of taxpayers with annual gross income of more than \$5,000,000, if the Commissioner decides that there is minimal risk that the approval will result in less net revenue collectable from the class of taxpayers over time.

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**15Z AIM method: approval of person over \$5,000,000**

For the purposes of **section RC 5(5B)(c)(ii)** of the Income Tax Act 2007, the Commissioner may approve a person's continued use of an AIM-capable accounting system for tax years in which the person has annual gross income of more than \$5,000,000, if the Commissioner decides that there is minimal risk that the approval will result in less net revenue collectable from the person over time.

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(2) This section applies for the 2018–19 and later income years.

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**45 New sections 45, and 45B, 45C, and 45D inserted**

(1) After section 44D, insert:

**45 AIM method information: taxpayers**

A person that uses the AIM method as described in **section RC 5(5B)** of the Income Tax Act 2007 must give to the Commissioner on or before an instalment date, information required by the Commissioner in relation to the instalment, the person's use of the AIM method, and their use of an approved AIM provider's AIM-capable accounting system, and any other information required by the Commissioner in the form prescribed by the Commissioner, even if the amount to pay for the instalment date is zero or a refund. The Commissioner may make a determination under **section 91AAZ** setting out information and form required or prescribed under this section.

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**45B AIM method information: approved AIM providers**

(1) An approved AIM provider must give to the Commissioner information required by the Commissioner in relation to their AIM-capable accounting system products, end-user's use of the products for a tax year, and any other matters relevant to the AIM method for the tax year, in the form prescribed by the Commissioner.

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(2) The Commissioner must not require taxpayer-specific information under this section.

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(3) The form must be given to the Commissioner within 6 months of the end of the tax year.

**45C AIM method: approval of large business AIM-capable system**

~~For the purposes of **section RC 5(5B)(c)(iii)** and the definition of **large business AIM-capable system** in **section YA 1** of the Income Tax Act 2007, the Commissioner may approve an AIM-capable accounting system for use by a class of taxpayers with annual gross income of more than \$5,000,000, if the Commissioner decides that there is minimal risk that the approval will result in less net revenue collectable from the class of taxpayers over time.~~

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**45D AIM method: approval of person over \$5,000,000**

~~For the purposes of **section RC 5(5B)(c)(ii)** of the Income Tax Act 2007, the Commissioner may approve a person's continued use of an AIM-capable accounting system for tax years in which the person has annual gross income of more than \$5,000,000, if the Commissioner decides that there is minimal risk that the approval will result in less net revenue collectable from the person over time.~~

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(2) This section applies for the 2018–19 and later income years.

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**46 New heading and sections 91AAX and to 91AAZY inserted**

(1) Before Part 5A, insert:

*Determinations relating to AIM method*

**91AAX Accounting and rate determinations relating to AIM method**

(1) The Commissioner may determine, for the purposes of **section RC 7B(3)(iv)** **(a)** of the Income Tax Act 2007, tax adjustments for accounting income and expenditure under the AIM method and tax rates for the calculation of tax liabilities under the AIM method.

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(2) In making a determination the Commissioner must have regard to—

(a) the accuracy of assessments of tax liabilities that would result from the use of the tax adjustments and tax rates;

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(b) the compliance costs incurred by taxpayers;

(c) the resources available to approved AIM providers.

(3) A determination may set out the tax year or years for which it is to apply, or a date from which it is to apply (the **implementation date**).

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(4) A determination (a **later determination**) may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination. The Commissioner must give at least 120 days notice of the implementation date of that later determination, in a publication chosen by the Commissioner.

(5) All determinations under this section must be published within 30 days of the making of the determination, in a publication chosen by the Commissioner. The implementation date must not be retrospective.

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**91AAY Class of taxpayers that must not use AIM method**

- (1) The Commissioner may determine, for the purposes of **section RC 5(5B)(f)** of the Income Tax Act 2007, that a class of taxpayers must not use the AIM method.
- (2) In making a determination the Commissioner must have regard to the risk that allowing the class of taxpayers to use the AIM method will result in less net revenue collectable from the class of taxpayers over time. 5
- (3) A determination may set out the tax year or years for which it is to apply, or a date from which it is to apply (the **implementation date**).
- (4) A determination (a **later determination**) may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination. The Commissioner must give at least 120 days notice of the implementation date of that later determination, in a publication chosen by the Commissioner. 10
- (5) All determinations under this section must be published within 30 days of the making of the determination, in a publication chosen by the Commissioner. 15

**91AAZ AIM method information**

- (1) The Commissioner may determine, for the purposes of **section 45**, information and form required or prescribed under that section.
- (2) In making a determination the Commissioner must have regard to—
  - (a) the Commissioner’s information needs in the context of the duties and obligations in section 6A: 20
  - (b) the compliance costs incurred by taxpayers:
  - (c) the resources available to approved AIM providers.
- (3) A determination may set out the tax year or years for which it is to apply, or a date from which it is to apply (the **implementation date**). 25
- (4) A determination (a **later determination**) may provide for the extension, limitation, variation, cancellation, or revocation of an earlier determination. The Commissioner must give at least 120 days notice of the implementation date of that later determination, in a publication chosen by the Commissioner.
- (5) All determinations under this section must be published within 30 days of the making of the determination, in a publication chosen by the Commissioner. The implementation date must not be retrospective. 30

(2) This section applies for the 2018–19 and later income years.

**47 Section 119 amended (Commissioner may determine amount of provisional tax)** 35

- (1) After section 119(1)(c), insert:
  - (cb) the taxpayer is using the AIM method and the approved AIM provider’s product that they are using calculates tax liabilities that are not reason-

ably accurate assessments of tax liabilities for the relevant income and expenditure; or

- (2) This section applies for the 2018–19 and later income years.

**48 New section 120KBC inserted (Interest for AIM method provisional taxpayers)** 5

- (1) Before section 120KC, insert:

**120KBC Interest for AIM method provisional taxpayers**

- (1) This section applies if, for a tax year,—
- (a) a person is liable to pay provisional tax for the tax year and uses the AIM method described in **section RC 5(5B)** of the Income Tax Act 2007; and 10
  - (b) there is no provisional tax interest avoidance arrangement in relation to the person.
- (2) If the person pays the amount of all 6 or 12 instalments, as applicable, on the instalment dates for the tax year in accordance with **sections RC 9 and RC 10B** of the Income Tax Act 2007, then, despite section 120KB(2) of this Act,— 15
- (a) the person’s residual income tax for the tax year is not due and payable as set out in **section RC 9** of the Income Tax Act 2007; and
  - (b) the amount of their residual income tax minus the total amount paid in relation to the instalments for the tax year is due and payable in 1 instalment on their terminal tax date. 20
- (3) If the person fails to pay the amount of an instalment on the relevant instalment date for the tax year (a **failed instalment**) in accordance with **sections RC 9 and RC 10B** of the Income Tax Act 2007, then, despite **section 120KB(2)** of this Act, the person’s residual income tax for the tax year is not due and payable as set out in **section RC 9** of the Income Tax Act 2007 for the instalment date. 25

- (2) This section applies for the 2018–19 and later income years.

**49 Section 120KC amended (Residual income tax of new provisional taxpayer)** 30

- (1) In section 120KC(2) replace “the letters A to F” with “the alphanumeric designations A to F1”.

- (2) This section applies for the 2018–19 and later income years.

**50 Section 120KE amended (Provisional tax and rules on use of money interest)** 35

- (1) After section 120KE(1)(c), insert:

- (cb) they have not used the AIM method under **section RC 7B** of that Act in the tax year to determine the amount of provisional tax payable for the tax year; and
- (2) In section 120KE(8) replace “the letters A to F” with “the alphanumeric designations A to F1”. 5
- (3) This section applies for the 2018–19 and later income years.
- 51 New section 120LB inserted (Meaning of unpaid tax and overpaid tax for tax credit transferees under AIM method)**
- After section 120L, insert:
- 120LB Meaning of unpaid tax and overpaid tax for tax credit transferees under AIM method** 10
- (1) For the purposes of determining amounts of unpaid tax, overpaid tax, and interest under a provision of this Part in relation to an instalment date for a tax year, for a person that is a provisional taxpayer for the year,—
- (a) the total amounts transferred to them for the year as a shareholder under **section LA 6(2)(db)** of the Income Tax Act 2007 (the **total transferred amounts**), are pro-rated against all instalments for the year; and 15
- (b) if there is an amount of overpaid or underpaid tax under a provision for the instalment, the pro-rated amount for the instalment is subtracted from the underpaid tax amount or added to the overpaid tax amount under the provision; and 20
- (c) to the extent to which **paragraph (b)** does not apply for the pro-rated amount for the instalment, the amount is overpaid tax under the provision for an instalment.
- (2) If **section 120KBB(2)** applies to the person, **subsection (1)** does not apply, and— 25
- (a) if there is an amount of overpaid or underpaid tax under **section 120KBB** for the ~~third~~third last instalment, the person’s total transferred amounts are subtracted from the underpaid tax amount or added to the overpaid amount under **section 120KBB**; and 30
- (b) to the extent to which **paragraph (a)** does not apply for the total transferred amounts, the amounts are overpaid tax under **section 120KBB(2)** for the ~~third~~third last instalment.
- 52 New section 120VB inserted (Interest on overpaid AIM method provisional tax)** 35
- (1) After section 120V, insert:

**120VB Interest on overpaid AIM method provisional tax**

No interest shall be payable by the Commissioner under section 120D(3) on an amount of AIM method provisional tax described in **section RM 6B(2)** of the Income Tax Act 2007.

- (2) This section applies for the 2018–19 and later income years. 5

**53 Section 141 amended (Tax shortfalls)**

- (1) In section 141(14), in the words before paragraph (a), replace “provisional taxpayer,” with “provisional taxpayer other than a date and taxpayer using the AIM method.”.

- (2) This section applies for the 2018–19 and later income years. 10

**54 Section 141B amended (Unacceptable tax position)**

- (1) After section 141B(1D), insert:

(1E) A taxpayer does not take an unacceptable tax position merely by using the AIM method and an approved AIM provider’s AIM-capable accounting system. 15

- (1F) **Subsection (1E)** does not apply for a taxpayer that—

- (a) is approved under section 45D:  
(b) uses a large business AIM-capable system.

- (2) This section applies for the 2018–19 and later income years.

**Part 3** 20

**Business tax and remedial matters**

Subpart 1—Amendments to Income Tax Act 2007

**55 Income Tax Act 2007 amended**

**This subpart** amends the Income Tax Act 2007.

**55B Section CB 6A amended (Disposal within 2 years: bright-line test for residential land)** 25

- (1) After section CB 6A(4), insert:

*Start of 2-year period for transfers by registration if trustees change*

- (4B) If the person referred to in subsection (1)(a) or (2)(a) is a trustee of a trust who has been transferred the land or undivided land from a trustee of the trust, the date on which the instrument was registered is treated as occurring on— 30

- (a) for subsection (1)(a)—

- (i) the earliest date (first date) on which an instrument to transfer the land to a trustee of the trust was registered under the relevant law

- referred to in the subsection, if there has been no intervening transfer to a person who is not a trustee; or
- (ii) the first date following the intervening transfer, if there has been an intervening transfer to a person who is not a trustee:
- (b) for subsection (2)(a)— 5
- (i) the earliest date (the **undivided date**) on which an instrument to transfer the undivided land to a trustee of the trust was registered under the relevant law referred to in the subsection, if there has been no intervening transfer to a person who is not a trustee; or
- (ii) the undivided date following the intervening transfer, if there has been an intervening transfer to a person who is not a trustee. 10
- (2) In section CB 6A, in the list of defined terms, insert “trustee”.
- 55C Section CB 15B amended (When land acquired)**
- Replace section CB 15B(3) with:
- Second exception: further land from exercise of option* 15
- (3) If a person who has an estate or interest in land has subsequently, as a consequence of the person’s exercise of an option, another estate or interest (the **other land interest**) in the same land, the person is treated for the purposes of this subpart as having the other land interest from the time of the exercise of the option. 20
- 55D Section CB 15B amended (When land acquired)**
- Replace **section CB 15B(3)** with:
- Second exception: land from exercise of option*
- (3) A person that exercises an option to acquire land and acquires the land, is treated as acquiring the land at the time when they exercise the option. 25
- 56 Section CD 32 amended (Employee benefits)**
- (1) Replace section CD 32(1), other than the heading, with:
- (1) A benefit provided to an employee is not a dividend if—
- (a) it is a fringe benefit subject to fringe benefit tax; or
- (b) it would be a fringe benefit subject to fringe benefit tax if an election had not been made under **section CX 17(4B)** (Benefits provided to employees who are shareholders or investors). 30
- (2) In section CD 32, in the list of defined terms, insert “employee”.
- (3) This section applies for the 2017–18 and later income years.

<b>57</b>	<b>Section CE 2 amended (Value and timing of benefits under share purchase agreements)</b>	
(1)	Replace section CE 2(11), other than the heading, with:	
(11)	The employee is treated as deriving employment income in relation to the benefit in the PAYE income payment form period after the 1 in which they receive the benefit.	5
(2)	In section CE 2, in the list of defined terms, insert “PAYE income payment form period”.	
(3)	This section applies for the 2017–18 and later income years.	
<b>58</b>	<b>Section CX 6 amended (Private use of motor vehicle)</b>	10
(1)	After section CX 6(2), insert:	
	<i>Exclusion: election by close company</i>	
(2B)	Subsection (1) does not apply if the employee is a shareholder-employee of a close company and the close company made an election under <b>section CX 17(4B)</b> to apply subpart DE (Motor vehicle expenditure) instead of the FBT rules.	15
(2)	In section CX 6, in the list of defined terms, insert “close company”, “FBT rules”, and “shareholder-employee”.	
(3)	This section applies for the 2017–18 and later income years.	
<b>59</b>	<b>Section CX 17 amended (Benefits provided to employees who are shareholders or investors)</b>	20
(1)	In the title to section CX 17(3), replace “ <i>Exclusion</i> ” with “ <i>Exclusion: benefit provided to non-executive director</i> ”.	
(2)	After section CX 17(4), insert:	
	<i>Exclusion: election by close company</i>	25
(4B)	Despite subsection (4), subsection (2) does not apply and the benefit is neither a fringe benefit nor a dividend in an income year if—	
(a)	the benefit—	
(i)	arises when a close company makes a motor vehicle available to a shareholder-employee for their private use; and	30
(ii)	would, in the absence of <b>this subsection</b> , be a fringe benefit arising under section CX 6; and	
(b)	the total benefits the close company provides to all shareholder-employees in the income year are 1 or 2 of the benefits described in <b>paragraph (a)</b> ; and	35
(c)	the close company chooses to apply subpart DE (Motor vehicle expenditure) for the motor vehicle and the shareholder-employee instead of the FBT rules.	

- When election may be made*
- (4C) An election by a close company under **subsection (4B)** may be made for the income year which includes the day on which the close company—
- (a) acquires the motor vehicle; or
  - (b) first starts using the motor vehicle for business use. 5
- Election continues to apply*
- (4D) An election under **subsection (4B)** applies for the income year described in **subsection (4C)**, and continues to apply until the end of the income year that includes the earlier of—
- (a) the day on which the close company stops using the motor vehicle for business use; or 10
  - (b) the day on which the close company disposes of the motor vehicle.
- (3) In the title to section CX 17(5), replace “election” with “election under subsection (2)”.
- (4) After section CX 17(5), insert: 15
- Notice of election under **subsection (4B)***
- (5B) The close company must give notice to the Commissioner of an election referred to in **subsection (4B)** in the time allowed for filing a return of income for the income year in which the election was made.
- (5) In section CX 17, in the list of defined terms, insert “business use”, “close company”, “income year”, “motor vehicle”, “return of income”, and “shareholder-employee”. 20
- (6) This section applies for the 2017–18 and later income years.
- 60 Section DB 7 amended (Interest: most companies need no nexus with income)** 25
- (1) After section DB 7(6), insert:
- Relationship with subpart DE*
- (6BA) Subpart DE (Motor vehicle expenditure) overrides this section for expenditure to which that subpart relates, if a company is a close company that has chosen to apply that subpart instead of the FBT rules, in accordance with **section CX 17(4B)(c)** (Benefits provided to employees who are shareholders or investors). 30
- (2) In section DB 7, in the list of defined terms, insert “close company” and “FBT rules”.
- (3) This section applies for the 2017–18 and later income years. 35
- 61 Section DB 8 amended (Interest: money borrowed to acquire shares in group companies)**
- (1) After section DB 8(6), insert:

*Relationship with subpart DE*

- (6BA) Subpart DE (Motor vehicle expenditure) overrides this section for expenditure to which that subpart relates, if a company is a close company that has chosen to apply that subpart instead of the FBT rules, in accordance with **section CX 17(4B)(c)** (Benefits provided to employees who are shareholders or investors). 5
- (2) In section DB 8, in the list of defined terms, insert “close company” and “FBT rules”.
- (3) This section applies for the 2017–18 and later income years.

**62 New section DB 18AA inserted (Square metre rate method) 10**

- (1) Before section DB 18A, insert:

**DB 18AA Square metre rate method**

*When this section applies*

- (1) A person may choose to apply this section to determine the amount of a deduction, in an income year, for the proportion of business use of a building (the **premises**) that is used partly for business purposes and partly for other purposes. 15

*Amount of deduction*

- (2) The amount of the deduction allowed in an income year for the business use of the premises is calculated using the formula— 20
- $$\begin{aligned} & \text{(total premise costs} \times \text{business proportion)} + \\ & \text{(business square metres} \times \text{square metre rate)}. \end{aligned}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **total premise costs** is the total amount of actual mortgage interest, rates, and rent that the person has paid with respect to the premises in the income year. 25
- (b) **business proportion** is determined by dividing business square metres by the total area of the premises in square metres:
- (c) **business square metres** is the total area, in square metres, of any separately identifiable parts of the premises that are used primarily for business purposes: 30
- (d) **square metre rate** is the applicable square metre rate that is published by the Commissioner.

*No other deductions allowed 35*

- (4) A person who makes an election to apply this section under **subsection (1)** is not entitled to claim any other deductions for the business use of the premises.

<i>Setting square metre rates</i>	
(5)	For the purposes of this section, the Commissioner must from time to time set and publish square metre rates. Defined in this Act: amount, business use, Commissioner, deduction, income year
(2)	This section applies for the 2017–18 and later income years. 5
<b>63</b>	<b>Section DE 1 amended (What this subpart does)</b>
(1)	Replace section DE 1(2)(a) with:
(a)	to a company, unless the company is a close company to which <b>section CX 17(4B)(b) and (c)</b> (Benefits provided to employees who are shareholders or investors) applies: 10
(2)	After section DE 1(2), insert:
<i>Application of subpart to close companies</i>	
(3)	When this subpart applies to a close company to which <b>section CX 17(4B)(b) and (c)</b> (Benefits provided to employees who are shareholders or investors) applies, business use of a motor vehicle by a shareholder-employee of the close company is treated as being business use by the close company. 15
(3)	In section DE 1, in the list of defined terms, insert “close company”.
(4)	This section applies for the 2017–18 and later income years.
<b>64</b>	<b>Section DE 2 amended (Deductions for business use)</b>
(1)	After section DE 2(1)(a), insert: 20
(ab)	interest on amounts used to fund, directly or indirectly, expenditure the person incurs for the business use of a motor vehicle, if the person is a close company that has chosen to apply this subpart instead of the FBT rules, in accordance with <b>section CX 17(4B)(c)</b> (Benefits provided to employees who are shareholders or investors): 25
(2)	After section DE 2(1), insert:
<i>Costs method or kilometre rate method</i>	
(1B)	A person can choose under <b>section DE 2B</b> to calculate the total amount of the deduction described in subsection (1)—
(a)	under subsections (2) and (4) (the <b>costs method</b> ) by adding together— 30
(i)	a deduction amount for expenditure, calculated under subsection (2); and
(ii)	a deduction amount for depreciation loss, calculated as described in subsection (4); or
(b)	by using the kilometre rate method described in section DE 12. 35
(3)	In section DE 2(3), replace “DE 3 to DE 12” with “DE 3 to DE 11”.
(4)	In section DE 2(6)(b), replace “DE 3 to DE 12” with “DE 3 to DE 11”.

- (5) In section DE 2(12)(b), replace “DE 3 to DE 12” with “DE 3 to DE 11”.
- (6) This section applies for the 2017–18 and later income years.
- 65 New section DE 2B inserted (Election to use kilometre rate method or costs method)**
- (1) After section DE 2, insert: 5
- DE 2B Election to use kilometre rate method or costs method**
- Election to use kilometre rate method*
- (1) A person may, in their return of income for an income year, choose to apply the kilometre rate method described in section DE 12 to calculate a deduction for the business use of a motor vehicle and for the income year that includes the latest of— 10
- (a) 1 April 2017, unless the person disposes of the motor vehicle in that income year:
- (b) the day on which they acquire the motor vehicle:
- (c) the day on which they first start using the motor vehicle for business purposes. 15
- Election to use costs method*
- (2) If a person does not make an election under **subsection (1)**, they are treated as making an election in the return of income to use the costs method for the corresponding income year. 20
- Election cannot be revoked*
- (3) An election made under **subsection (1) or (2)** in relation to a particular motor vehicle cannot be revoked, and applies for all subsequent income years until the end of the income year that includes the day on which the person disposes of the motor vehicle. 25
- Defined in this Act: business, business use, deduction, income year, motor vehicle, return of income
- (2) This section applies for the 2017–18 and later income years.
- 66 Section DE 3 amended (Methods for calculating proportion of business use)**
- (1) In section DE 3, in the words before paragraph (a), replace “3 methods” with “2 methods”. 30
- (2) In section DE 3(b), replace “DE 11:” with “DE 11.”
- (3) Repeal section DE 3(c).
- (4) This section applies for the 2017–18 and later income years.
- 67 Section DE 4 amended (Default method for calculating proportion of business use)** 35
- (1) Replace section DE 4(1)(c) with:

- (c) the person has not elected to use the kilometre rate method for the motor vehicle.

- (2) This section applies for the 2017–18 and later income years.

## 68 Heading and section DE 12 replaced

- (1) Replace the heading before section DE 12 and section DE 12 with: 5

### *Kilometre rates*

#### **DE 12 Kilometre rate method**

##### *When this section applies*

- (1) This section applies for the purposes of calculating a deduction for the business use of a motor vehicle under section DE 2(1) if a person made an election under **section DE 2B** to apply this section. 10

##### *Amount of deduction*

- (2) The amount of the deduction allowed for the business use of the vehicle in an income year is the sum of the amounts calculated under the following formula for each applicable kilometre rate for the vehicle for the income year: 15

$$\text{kilometre rate} \times \text{kilometres travelled} \times \text{business proportion.}$$

##### *Definition of items in formula*

- (3) In the formula,—
- (a) **kilometre rate** is the applicable kilometre rate that is published by the Commissioner: 20
- (b) **kilometres travelled** is the total number of kilometres the vehicle has travelled, for both business purposes and other purposes, to which the applicable kilometre rate applies:
- (c) **business proportion** is the proportion of business use of the vehicle for the income year, calculated using a method described in sections DE 5 to DE 11, and expressed as a decimal. 25

##### *Setting kilometre rates*

- (4) For the purposes of this section, the Commissioner must from time to time set and publish kilometre rates. 30

Defined in this Act: amount, business, business use, Commissioner, deduction, income year, motor vehicle.

- (2) This section applies for the 2017–18 and later income years.

## 69 Section DF 4 amended (Payments for social rehabilitation)

Replace section DF 4(3)(b) with:

- (b) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under **section RD 10B** (Amounts of tax for schedular payments). 35

- 70 Section EA 4 amended (Deferred payment of employment income)**
- (1) After section EA 4(1)(b)(i), insert:
- (ib) the income year, if they choose, in a return of income, to not use paragraph (i) or (ii); or
- (2) This section applies for the 2017–18 and later income years. 5
- 71 Section EE 49 amended (Amount of depreciation recovery income when item partly used for business)**
- (1) After section EE 49(2), insert:
- No depreciation recovery income*
- (2B) Despite subsections (1) and (2), there is no depreciation recovery income under this section for a motor vehicle which is dealt with under subpart DE if the person has made an election under **section DE 2B(1)** (Election to use kilometre rate method or costs method) to use the kilometre rate method described in section DE 12 (Kilometre rate method) for that vehicle. 10
- (2) This section applies for the 2017–18 and later income years. 15
- 72 Section HD 3 amended (Agent’s duties and liabilities)**
- (1) In section HD 3(1), delete “a business carried on in New Zealand by”.
- (2) In section HD 3, in the list of defined terms, delete “business” and “New Zealand”.
- ~~**72 Section LA 6 amended (Remaining refundable credits: PAYE, RWT, and certain other items)**~~ 20
- (1) ~~After section LA 6(2)(c), insert:~~
- ~~(eb) fourth, if the person is a company that has 1 or more provisional tax at-tributors, transfer a tax credit of the amount described in **subsection (2B)**. The amount transferred is treated as tax credit for the relevant at-tributor under **section LB 2** for the tax year that the tax credit relates to, and is also treated as a refund of income tax paid to the company for the purposes of section OB 32 (ICA refund of income tax):~~ 25
- (2) ~~In section LA 6(2)(d), replace “fourth” with “fifth”.~~
- (3) ~~After section LA 6(2), insert:~~ 30
- ~~*Tax credits for provisional tax attributors*~~
- (2B) ~~For the purposes of **subsection (2)(eb)**, the amount for a provisional tax at-tributor is the portion of the tax credit that is equal to the proportion of the at-tributor’s residual income tax arising from shareholder attributed income (**shareholder RIT**) to the total of all attributors’ shareholder RITs. However, the maximum amount for a provisional tax attributor is their shareholder RIT.~~ 35
- (4) ~~This section applies for the 2018–19 and later income years.~~

**73 Section LB 2 replaced (Tax credits for provisional tax payments)**

(1) Section LB 2 is replaced with:

**LB 2 Tax credits for provisional tax payments***Tax credit*

(1) A person has a tax credit for a tax year equal to the amount of provisional tax for the tax year paid by — 5

(a) the person; or

(b) an agent of the person, if the agent is liable to pay provisional tax on behalf of the person.

*Additional tax credit for provisional tax attributors* 10

(2) A person who is a provisional tax attributor for a company also has a tax credit for the tax year equal to the amount transferred to them —

(a) by the company for the tax year, as provided in a reconciliation statement under **section 45GE** of the Tax Administration Act 1994;

(b) under **section LA 6(2)(cb)** (Remaining refundable credits: PAYE, RWT, and certain other items). 15

*Subtraction of tax credits transferred to provisional tax attributors*

(3) A person that is a company that has 1 or more provisional tax attributors must subtract from its tax credit under **subsection (1)** the total amount transferred by it to its provisional tax attributors for the tax year, as described in **subsection (2)(a)**. 20

Defined in this Act: agent, amount, company, pay, provisional tax, provisional tax attributor, tax credit, tax year

(2) This section applies for the 2018–19 and later income years.

**74 Section LB 7 amended (Tax credits related to personal service rehabilitation payments: providers) 25**

Replace section LB 7(4)(b) with:

(b) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under **section RD 10B** (Amounts of tax for schedular payments). 30

**75 Section LB 8 amended (Tax credits related to personal service rehabilitation payments: payers)**

Replace section LB 8(3)(c) with:

(c) **tax rate** is the rate of tax applying to the personal service rehabilitation payment under **section RD 10B** (Amounts of tax for schedular payments). 35

**76 Section MD 9 amended (Fifth requirement: full-time earner)**

Replace section MD 9(2)(d)(i) with:

- (i) by a person (the **claimant**), who receives a personal service rehabilitation payment from which an amount of tax has been withheld at a rate specified in **section RD 10B** (Amounts of tax for schedular payments); and

5

~~**77 New section OB 33B inserted (ICA transfer of provisional tax credit)**~~

~~(1) After section OB 33, insert:~~

~~**OB 33B ICA transfer of provisional tax credit**~~

~~*Debit*~~

10

- ~~(1) An ICA company has an imputation debit for the total amount of tax credit transferred by the company to its provisional tax attributors, as described in **section LB 2(3)** (Tax credits for provisional tax payments).~~

~~*Table reference*~~

- ~~(2) The imputation debit in **subsection (1)** is referred to in table O2: imputation debits, row 5B (ICA transfer of provisional tax credit).~~

15

~~*Debit date*~~

- ~~(3) The debit date is the day the company gives the Commissioner a reconciliation statement under **section 45C** of the Tax Administration Act 1994 for the transfer.~~

20

~~Defined in this Act: Commissioner, ICA company, imputation debit, provisional tax attributor, tax credit~~

- ~~(2) This section applies for the 2018–19 and later income years.~~

~~**78 Table O2 amended (Imputation debits)**~~

~~In table O2, after row 5, insert:~~

25

~~5B ICA transfer of provisional tax credit set out in **section OB 33B** **section OB 33B**~~

~~**79 Section RC 3 amended (Who is required to pay provisional tax?)**~~

~~(1) After section RC 3(3), insert:~~

~~*No obligation: provisional tax attributor*~~

- ~~(4) A person has no obligation to pay provisional tax for a tax year if they are a provisional tax attributor and the following amount is \$2,500 or less:~~

30

~~residual income tax — shareholder attributed.~~

~~*Definition of items in formula*~~

- ~~(5) In the formula —~~

(a)	<del>residual income tax is the person's residual income tax for the preceding tax year.</del>	
(b)	<del>shareholder attributed is, if the person is a provisional tax attributor for 1 or more companies, the total of the person's shareholder attributed tax for the companies for the preceding tax year.</del>	5
(2)	<del>In section RC 3, in the list of defined terms, insert "provisional tax attributor" and "shareholder attributed tax".</del>	
(3)	<del>This section applies for the 2018–19 and later income years.</del>	
<b>80</b>	<del><b>Section RC 5 amended (Methods for calculating provisional tax liability)</b></del>	
(1)	<del>In section RC 5(1), replace "subsections (2) to (7)." with "subsections (2) to (7). However, a person who pays amounts of provisional tax for the first 2 instalments of the tax year equal to the amounts given by section RC 10 for the standard method can not choose the estimation method for the tax year."</del>	10
(2)	<del>This section applies for the 2017–18 and later income years.</del>	
<b>81</b>	<del><b>Table R1 amended (Summary of instalment dates and calculation methods for provisional tax)</b></del>	15
(1)	<del>In table R1, in the row labelled "Standard RC 5(2), (3)", replace "120KE(1), (2)" with "<b>120KBB</b>, 120KE(1), (2)".</del>	
(2)	<del>This section applies for the 2017–18 and later income years.</del>	
<b>82</b>	<del><b>Section RC 10 amended (Calculating amount of instalment under standard and estimation methods)</b></del>	20
(1)	<del>In section RC 10(2), in the words before the formula, replace "The amount of an instalment of provisional tax" with "The amount of an instalment of provisional tax for a person that is neither a provisional tax attributor nor a company with 1 or more shareholders that are provisional tax attributors".</del>	25
(2)	<del>In section RC 10(3), replace "In the formula" with "In the formula in subsection (2)".</del>	
(3)	<del>After section RC 10(3) insert:</del>	
	<i>Calculation</i>	
(3B)	<del>The amount of an instalment of provisional tax for a person that is a provisional tax attributor or that is a company and 1 or more shareholders is a provisional tax attributor is calculated using the formula—</del>	30
	<del><math display="block">\frac{((\text{residual income tax} - \text{shareholder attributed} + \text{company attributed}) \times \text{instalment number} \div \text{total instalments}) - \text{provisional tax.}}</math></del>	
	<i>Definitions of items in formula</i>	
(3C)	<del>In the formula in <b>subsection (3B)</b>—</del>	35
(a)	<del><b>residual income tax</b> is a person's residual income tax, as applicable—</del>	

- (i) ~~for the preceding tax year, uplifted by 5% (modified as applicable by sections RZ 5 (Calculating amounts under standard method: 2010–11 to 2012–13 income years) and RZ 5D (Standard method or GST method: transition for Maori authorities); or~~
  - (ii) ~~for the tax year before the preceding tax year, uplifted by 10% (modified as applicable by sections RZ 5 and RZ 5D); or~~ 5
  - (iii) ~~the amount estimated by them:~~
  - (b) ~~shareholder attributed~~ is, if the person is a provisional tax attributor, the total of the following amounts for the relevant companies in relation to which the person is an attributor, as applicable: 10
    - (i) ~~the person's shareholder attributed tax for the relevant company for the preceding tax year, uplifted by 5%; or~~
    - (ii) ~~the person's shareholder attributed tax for the relevant company for the tax year before the preceding tax year, uplifted by 10%; or~~
    - (iii) ~~the person's estimate of their shareholder attributed tax for the relevant company:~~ 15
  - (c) ~~company attributed~~ is, if the person is a company with 1 or more shareholders that are provisional tax attributors, the total of the following amounts for the attributors, as applicable:
    - (i) ~~the relevant attributor's shareholder attributed tax for the person for the preceding tax year, uplifted by 5%; or~~ 20
    - (ii) ~~the relevant attributor's shareholder attributed tax for the person for the tax year before the preceding tax year, uplifted by 10%; or~~
    - (iii) ~~the relevant attributor's estimate of the amount of tax payable by them for their shareholder attributed income:~~ 25
  - (d) ~~instalment number~~ is the number of the instalment for the tax year, whether first, second, or third:
  - (e) ~~total instalments~~ is the total number of the instalment for the tax year:
  - (f) ~~provisional tax~~ is the amount of a person's provisional tax liabilities for the tax year to date. 30
- Consistency*
- (3D) ~~For the purposes of the formula in **subsection (2)**, a shareholder attributed amount for a provisional tax attributor in relation to a company must be the same as the company attributed amount for the company in relation to the provisional tax attributor.~~ 35
- (4) After section RC 10(4), insert:

- Meaning of provisional tax attributor*
- (5) ~~Provisional tax attributor means a person who is a shareholder of a company, if the company is a provisional taxpayer, and the company and the shareholder meet the requirements of **section 15Y** of the Tax Administration Act 1994.~~
- Meaning of shareholder attributed income* 5
- (6) ~~Shareholder attributed income means, for a company and an income year, amounts paid to a shareholder of the company in their capacity as employee of the company, to the extent to which the amounts are income other than from a PAYE income payment.~~
- Meaning of shareholder attributed tax* 10
- (7) ~~Shareholder attributed tax means, for a company and a tax year,—~~
- (a) ~~28% of a shareholder’s shareholder attributed income for the corresponding income year; or~~
- (b) ~~the shareholder’s residual income tax for the tax year minus the amount that would be their residual income tax for the tax year if their shareholder attributed income for the corresponding income year were ignored.~~ 15
- (5) ~~In section RC 10, in the list of defined terms, insert “company”, “PAYE income payment”, “provisional tax attributor”, “shareholder attributed income”, and “shareholder attributed tax”.~~ 20
- (6) ~~This section applies for the 2018–19 and later income years.~~
- 83 Section RD 3 amended (PAYE income payments)**
- Replace section RD 3(1)(b)(iii) with:
- (iii) an amount paid or benefit provided, by a person (the **claimant**), who receives a personal service rehabilitation payment from which an amount of tax has been withheld at a rate specified in **section RD 10B**. 25
- 84 Section RD 6 amended (Certain benefits and payments)**
- (1) Replace sections RD 6(3)(a), (ab), and (b) with:
- (a) for a benefit referred to in subsection (1)(d),— 30
- (i) for an employer described in section CE 2(10) (Value and timing of benefits under share purchase agreements), on the first day of the PAYE income payment form period in which the employee derives the benefit under **section CE 2(11)** (Value and timing of benefits under share purchase agreements); or 35
- (ii) for employers not described in section CE 2(10), on the date the benefit vests in the employee:

<p>(b) for a benefit referred to in subsection (1)(a) to (c) that constitutes the only salary or wages of the employee, on the last day of the pay period:</p> <p>(c) for a benefit that paragraphs (a) and (b) do not apply to, when the last amount of salary or wages for the pay period is paid.</p>	5
<p>(2) In section RD 6, in the list of defined terms, insert “PAYE income payment form period”.</p> <p>(3) This section applies for the 2017–18 and later income years.</p>	5
<p><b>85 Section RD 7B amended (Treatment of certain benefits under employee share agreements)</b></p>	
<p>(1) In section RD 7B(3)(c), replace “RD 6(3)(ab)” with “<b>RD 6(3)(a)</b>”.</p> <p>(2) This section applies for the 2017–18 and later income years.</p>	10
<p><b>86 Section RD 8 amended (Schedular payments)</b></p>	
<p>(1) In section RD 8(1)(a)(i), replace “Rates of tax for schedular payments” with “Standard rates of tax for schedular payments”.</p> <p>(2) In section RD 8(1)(b)(iii), after “non-resident entertainer,” insert “a company <del>that receives in relation to</del> a payment described in <b>schedule 4, part J or part W</b>.”</p>	15
<p><b>87 Section RD 10 amended (Amounts of tax for PAYE income payments)</b></p> <p>Replace section RD 10(3)(a) with:</p>	
<p>(a) under <b>section RD 10B</b>; and</p>	20
<p><b>88 New section RD 10B inserted (Amounts of tax for schedular payments)</b></p> <p>After section RD 10, insert:</p>	
<p><b>RD 10B Amounts of tax for schedular payments</b></p> <p><i>When this section applies</i></p>	
<p>(1) This section applies to determine the amount of tax for a schedular payment for the purposes of <b>section RD 10(3)(a)</b>.</p> <p><i>Rate when no notification of tax file number</i></p> <p>(2) The person making the schedular payment must withhold, as tax, <del>45% of the schedular payment if the person has not been notified of the payee’s name and tax file number under <b>section 24L</b> of the Tax Administration Act 1994.</del></p> <p>(a) <u>45% of the schedular payment, if the person has not been notified of the payee’s name and tax file number under <b>section 24L</b> of the Tax Administration Act 1994 and <b>paragraph (b)</b> does not apply;</u></p> <p>(b) <u>20% of the schedular payment, if the person has not been notified of the payee’s name and tax file number under <b>section 24L</b> of the Tax Ad-</u></p>	25 30 35

ministration Act 1994 and the payee is a company that is a non-resident contractor.

*Basic rates*

- (3) If the person making the schedular payment has been notified of the payee's name and tax file number under **section 24L** of the Tax Administration Act 1994, the tax rate that applies to a schedular payment is— 5
- (a) the payee's elected rate under **section 24LB** of the Tax Administration Act 1994, if the payee chooses an elected rate under that section and **paragraph (c)** of this subsection does not apply:
- (b) the relevant rate set out in **schedule 4** (Standard rates of tax for schedular payments), if the payee does not choose an elected rate under **section 24LB** of the Tax Administration Act 1994 and **paragraph (c)** of this subsection does not apply: 10
- (c) if the Commissioner has provided the payee with a special tax rate certificate under section 24N of the Tax Administration Act 1994, the tax rate set out in the certificate. 15

*Commissioner prescribed tax rate and deduction amount*

- (4) Despite **subsection (3)**, if the person making the schedular payment has been notified of an applicable tax rate prescribed by the Commissioner under **section 24LC(1)** of the Tax Administration Act 1994, the person must use that prescribed and notified tax rate for the payment. The person must also deduct or extract from schedular payments payable to the payee, the amount prescribed under **section 24LC(2)** of that Act and pay it to the Commissioner. 20

*Non-resident entertainer rate*

- (5) Despite **subsections (2), (3), and (4)**, the tax rate, if the payee is a non-resident entertainer, is 0.20. 25

Defined in this Act: amount of tax, company, non-resident contractor, non-resident entertainer, notify, pay, schedular payment, tax, tax file number

**89 Section RD 18 repealed (Schedular payments without notification)**

Repeal section RD 18. 30

**90 Section RD 60 amended (Close company option)**

- (1) In section RD 60(1)(a), replace “\$500,000; or” with “\$1,000,000; or”.
- (2) This section applies for the 2017–18 and later income years.

**91 Section RD 61 amended (Small business option)**

- (1) In section RD 61(1)(a), replace “\$500,000; or” with “\$1,000,000; or”. 35
- (2) This section applies for the 2017–18 and later income years.

**91B Section RL 1 amended (Residential land withholding tax)**

After section RL 1(4), insert:

*When this subpart does not apply: relationship property*

**(4B)** This subpart does not apply if section FB 3A(2) (Residential land) applies for the disposal of the relevant residential land.

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**91C Section RL 2 amended (Vendors: who must pay, and how?)**

In section RL 2,—

- (a)** in subsection (6)(a), replace “purchase” with “purchase amount”; and
- (b)** in subsection (6)(b), replace “purchase” with “purchase amount”; and
- (c)** in subsection (8), in the words before the paragraphs, replace “purchase” with “purchase amount”.

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**91D Section RL 4 amended (How much RLWT?)**

In section RL 4(1), replace “residential land purchase amount.” with “residential land purchase amount. All amounts in this section are GST exclusive.”

**92 Section YA 1 amended (Definitions)**

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- (1)** This section amends section YA 1.
- (2)** In the definition of **agricultural, horticultural, or viticultural company**, replace “Rates of tax for schedular payments” with “Standard rates of tax for schedular payments”.
- (3)** In the definition of **contract payment**, paragraph (c), replace “Rates of tax for schedular payments” with “Standard rates of tax for schedular payments”.
- (4)** In the definition of **employee**, in paragraph (c)(ii), replace “parts A and I (Rates of tax for schedular payments)” with “parts A, I, and W (Standard rates of tax for schedular payments)”.
- (5)** In the definition of **employer**, paragraph (c)(ii), replace “parts A and I (Rates of tax for schedular payments)” with “parts A, I, and W (Standard rates of tax for schedular payments)”.

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**(5B)** In the definition of **initial provisional tax liability**,—

- (a)** replace paragraph (a) with:
- (a)** for a person who is not a natural person, or a person who is a natural person and a trustee of a trust, a provisional tax liability for a tax year in which the person starts to derive income from a taxable activity when—
  - (i)** they did not derive income from a taxable activity in any of the 4 previous tax years; and
  - (ii)** they have residual income tax of \$60,000 or more in the tax year;and

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**(b)** in paragraph (b)(ii), replace “\$50,000” with “\$60,000”.

- (5C) In the definition of offshore RLWT person,—
- (a) in paragraph (c)(iv), delete “a partner in”; and
  - (b) in paragraph (c)(vi), replace “partner in a limited partnership or an owner of an effective look-through interest in a look-through company” with “limited partnership or a look-through company”. 5
- (6) In the definition of **Part F activity**, replace “Rates of tax for schedular payments” with “Standard rates of tax for schedular payments”.
- (7) Insert, in appropriate alphabetical order:  
**PAYE income payment form period** means the payment period for which an employer must provide a PAYE income payment form under section RD 22(2) (Returns for amounts of tax paid to Commissioner) 10
- ~~(8) Insert, in appropriate alphabetical order:  
**provisional tax attributor** is defined in **section RG 10(5)** (Calculating amount of instalment under standard and estimation methods)~~
- ~~(9) Insert, in appropriate alphabetical order:  
**shareholder attributed income** is defined in **section RG 10(6)** (Calculating amount of instalment under standard and estimation methods)~~ 15
- ~~(10) Insert, in appropriate alphabetical order:  
**shareholder attributed tax** is defined in **section RG 10(7)** (Calculating amount of instalment under standard and estimation methods)~~ 20
- 93 Schedule 4 amended (Rates of tax for schedular payments)**
- (1) Replace the heading to schedule 4 with “**Standard rates of tax for schedular payments**”.
  - (2) In schedule 4, part A, clause 1, replace “0.15 rate of tax” with “standard rate of tax of 0.15”. 25
  - (3) In schedule 4, part B, clause 1, replace “0.33 rate of tax” with “standard rate of tax of 0.33”.
  - (4) In schedule 4, part B, clause 1B, replace “0.33 rate of tax” with “standard rate of tax of 0.33”.
  - (5) In schedule 4, part C, clause 1, replace “0.15 rate of tax” with “standard rate of tax of 0.15”. 30
  - (6) In schedule 4, part D, clause 1, replace “0.20 rate of tax” with “standard rate of tax of 0.20”.
  - (7) In schedule 4, part D, clause 2, replace “0.15 rate of tax” with “standard rate of tax of 0.15”. 35
  - (8) In schedule 4, part E, clause 1, replace “0.20 rate of tax” with “standard rate of tax of 0.20”.

- (9) In schedule 4, part F, clause 1, replace “0.25 rate of tax” with “standard rate of tax of 0.25”.
- (10) In schedule 4, part F, clause 2, replace “0.20 rate of tax” with “standard rate of tax of 0.20”.
- (11) In schedule 4, part F, clause 3, replace “0.20 rate of tax” with “standard rate of tax of 0.20”.
- (12) In schedule 4, part F, clause 4, replace “0.20 rate of tax” with “standard rate of tax of 0.20”.
- (13) In schedule 4, part F, clause 5, replace “0.20 rate” with “standard rate of tax of 0.20”.
- (14) In schedule 4, part F, clause 6, replace “0.15 rate” with “standard rate of tax of 0.15”.
- (15) In schedule 4, part G, clause 1, replace “0.20 rate of tax” with “standard rate of tax of 0.20”.
- (16) In schedule 4, part H, clause 1, replace “0.25 rate of tax” with “standard rate of tax of 0.25”.
- (17) In schedule 4, part H, clause 2, replace “0.25 rate of tax” with “standard rate of tax of 0.25”.
- (18) In schedule 4, part I, clause 1, replace “0.105 rate of tax” with “standard rate of tax of 0.105”.
- (19) In schedule 4, after part I, insert:

**Part J**

**Payments under labour-hire arrangements**

- 1 A payment by ~~an entity to a person~~ a person (the **payer**) to another person (the **payee**) has a standard rate of tax of 0.20 for each dollar of the payment if—
  - (a) 1 of the ~~entity~~ payer’s main activities is the business of arranging for a person or persons to perform work or services directly for clients of the ~~entity~~ payer; and
  - (b) the payment is made under an arrangement the performance of which, in whole or in part, involves the performance of work or services by the payee directly for a client of the ~~entity~~ payer, or directly for a client of another ~~entity described in paragraph (a)~~ person; and
  - (c) in the case of the payer and the payee being associated persons described in section YB 2 or YB 3, the payer has chosen to apply this part to the payment.

**Part W**

**Voluntary schedular payments**

~~4 A payment to a person is treated as a schedular payment (a **voluntary schedular payment**) and has a standard rate of tax of 0.20 for each dollar of the payment if—~~

~~(a) there is no obligation to withhold an amount from the payment under this Act or under the Tax Administration Act 1994; and~~

~~(b) the payer and the payee have agreed that the payment is a voluntary schedular payment, and have recorded their agreement in a document.~~

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(20) In schedule 4, after **part J**, insert:

**Part W**  
**Voluntary schedular payments**

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1 A payment to a person is treated as a schedular payment (a **voluntary schedular payment**) and has a standard rate of tax of 0.20 for each dollar of the payment if—

(a) there is no obligation to withhold an amount from the payment under this Act or under the Tax Administration Act 1994; and

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(b) the payer and the payee have agreed that the payment is a voluntary schedular payment, and have recorded their agreement in a document.

(21) **Subsection (19)** applies.—

(a) on or after 1 April 2017; or

(b) if the payer is unable to have systems in place for reasonably cost-effective compliance with **subsection (19)** before 1 April 2017, on or after the earliest of the following dates:

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(i) 1 July 2017;

(ii) the date on which the payer has systems in place for reasonably cost-effective compliance with **subsection (19)**.

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Subpart 2—Amendments to Tax Administration Act 1994

**94 Tax Administration Act 1994 amended**

**This subpart** amends the Tax Administration Act 1994.

**95 Section 3 amended (Interpretation)**

(1) This section amends section 3(1).

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(2) Insert, in appropriate alphabetical order:

**approved credit reporting agency** is defined in **section 85N** for the purposes of Part 4

(3) Insert, in appropriate alphabetical order:

**credit report** is defined in **section 85N** for the purposes of Part 4

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- (3B) Insert, in appropriate alphabetical order:  
interest concession provisional taxpayer is defined in **section 120KBB(4)** for the purposes of Part 7
- (3C) Insert, in appropriate alphabetical order:  
provisional tax associate is defined in **section 120KBB(4)** for the purposes of Part 7 5
- (4) Insert, in appropriate alphabetical order:  
provisional tax interest avoidance arrangement is defined in **section 120KBB(4)** for the purposes of Part 7
- (5) Insert, in appropriate alphabetical order:  
reportable unpaid tax is defined in **section 85N** for the purposes of Part 4 10
- (6) ~~Insert, in appropriate alphabetical order:~~  
~~standard method associate~~ is defined in ~~section 120KBB(4)~~ for the purposes of Part 7
- 96 New heading and new section 15Y inserted** 15
- (1) ~~Before Part 3, insert:~~
- Provisional tax attribution***

**15Y Provisional tax attributor**

(1) ~~A person is a provisional tax attributor for a company and a tax year if—~~

  - (a) ~~the person is a natural person; and~~ 20
  - (b) ~~the person is a shareholder of the company on the first day of the company's income year corresponding to the tax year; and~~
  - (c) ~~the person and the company agree that the person is a provisional tax attributor for the company; and~~
  - (d) ~~the company is a provisional taxpayer; and~~ 25
  - (e) ~~the company has given the Commissioner notice of the agreement described in **paragraph (c)** before the company's first provisional tax instalment date for the tax year, in the form prescribed by the Commissioner.~~

(2) ~~A person ceases to be a provisional tax attributor for a company and a tax year if the Commissioner receives notice from the company of the cancellation of an agreement under **subsection (1)** before the company's first provisional tax instalment date for the tax year in the form prescribed by the Commissioner.~~ 30

(2) ~~This section applies for the 2018–19 and later income years.~~
- 97 Section 24G amended (Use of incorrect tax codes)** 35
- (1) In the title to section 24G, after “tax codes”, insert “or tax rates”.

- (2) In section 24G(1), after “tax code”, insert “or tax rate”.
- (3) In section 24G(2), replace “incorrect code and provide the tax code” insert “incorrect code or tax rate, and provide the correct tax code and tax rate, as required.”.
- (4) In section 24G(3), replace “tax code” with “tax code or tax rate”, in each place where it appears. 5

#### 98 Section 24L amended (Schedular notification)

Replace section 24L(2) with:

- (2) Before the person (the **payee**) receives the schedular payment, the payee must give the person making the payment a notice that states— 10
- (a) ~~the tax rate that the payee has elected under **section 24LB** to be applied to the schedular payment; or~~
- (a) if the payee has elected a tax rate to be applied to the schedular payment, as provided by **section 24LB**, that elected tax rate;
- (b) if the Commissioner has notified the payee that a different tax rate applies to the schedular payment, as provided by **section 24LC**, that different tax rate; 15
- (c) the payee’s name and tax file number.

#### 99 New sections 24LB and 24LC inserted

After section 24L, insert: 20

##### 24LB Schedular tax rate elected by payee

- (1) A person who is entitled to receive a schedular payment (the **payee**) may choose the tax rate, to 1 decimal place, to be applied to the payment for the purposes of **section RD 10B(3)(a)** of the Income Tax Act 2007 (the **elected rate**). 25
- (2) The elected rate must be a minimum of—
- (a) 15% if the payee is—
- (i) a non-resident;
- (ii) a holder of a temporary entry class visa as defined in section 4 of the Immigration Act 2009; or 30
- (b) 10% for all other payees.
- (3) Despite **subsection (1)**, if the payee has notified a person making a schedular payment (the **payer**) of two different elected rates within 12 months of each other, then the last notified rate is the elected rate, and the payee may not choose another elected rate in relation to the payer within a 12 month period of the first notified rate. 35

- (4) Despite **subsection (3)**, the payee may choose another elected rate under **subsection (1)** in relation to the payer in the 12 month period and notify it to the payer, if the payer and the payee agree that the payee may choose and notify that other rate.

**24LC Schedular tax rate prescribed by Commissioner**

- (1) Where a person who is entitled to receive a schedular payment (a **payee**) has not met a liability under the Inland Revenue Acts, the Commissioner may prescribe the tax rate to be applied to the payee's schedular payments by notifying the rate to—
- (a) the payee; or
  - (b) the payee and a person (a **payer**) making a schedular payment to the payee.

(1B) Upon the request of the payee, the Commissioner must rescind a rate prescribed and notified under **subsection (1)**, by notifying the relevant persons described in **subsection (1)**, if the Commissioner is satisfied that all liabilities under the Inland Revenue Acts have been met, and is reasonably satisfied that all liabilities under the Inland Revenue Acts will be met in the future.

- (2) The Commissioner may also prescribe and notify, at the same time as prescribing and notifying a tax rate under **subsection (1)**, a percentage of the payee's schedular payments that payers must—
- (a) deduct or extract from schedular payments payable to the payee; and
  - (b) pay to the Commissioner.

(2B) Upon the request of the payee, the Commissioner must rescind a percentage prescribed and notified under **subsection (2)**, by notifying the payer, if the Commissioner is satisfied that the payee has paid all tax due and payable.

- (3) The tax rate prescribed under **subsection (1)** and the percentage prescribed under **subsection (2)** must not total more than ~~60~~50%.
- (4) An amount received by the Commissioner under **subsection (2)** is to the credit of the payee's liabilities under the Inland Revenue Acts and is not a tax credit under part L of the Income Tax Act 2007.
- (5) The Commissioner may revoke or prescribe and notify a new tax rate under **subsection (1)** and percentage under **subsection (2)** from time to time.
- (6) The Commissioner does not have to notify the payee under **subsection (1)(b)**, if, after making reasonable inquiries, the Commissioner does not have a valid address for the payee.

**100 Section 24M amended (Exemption certificates for schedular payments)**

- (1) Replace section 24M(2) with:
- (2) Subsection (1) does not apply to a payment—
- (a) to a non-resident entertainer:

- (b) that is a payment, described in **schedule 4, part J** of the Income Tax Act 2007, to a New Zealand resident.
- (2) After section 24M(6), insert:
- (7) A person who is provided with an exemption certificate before 1 April 2017 for a period ending on or after 1 April 2017 is treated as having a special rate certificate under section 24N with a 0% rate for schedular payments the person is entitled to receive, to the extent to which— 5
- (a) the schedular payments—
- (i) are received between 31 March 2017 and 1 April 2018; or
- (ii) if the period set out in the certificate of exemption ends before 31 March 2018, are received before the end of that period; and 10
- (b) the certificate of exemption is not in force on or after 1 April 2017 because of amendments made to this Act by the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2016.
- 101 Section 32H amended (Providing RWT exemption certificate when person meets requirements)** 15
- (1) In section 32H(2), replace “The certificate is valid from the starting date set out in the certificate.” with “The certificate is valid on and after the starting date set out in the certificate, and is valid for an unlimited period if no end date is specified under subsection (3).” 20
- (2) Replace section 32H(3) with:
- (3) An end date—
- (a) must be set out in the certificate by the Commissioner if the person is described in section 32E(2)(j):
- (b) may be set out in the certificate by the Commissioner in exceptional circumstances. 25
- 101B Section 32I amended (Providing RWT exemption certificate to person who does not meet requirements)**
- (1) In section 32I(1), replace “a period” with “a period, including an unlimited period.” 30
- (2) In section 32I(4), replace “at the expiry date set out in the certificate” with “at the end date set out in the certificate, or at the date notified to the person by the Commissioner if no end date is set out in the certificate”.
- 101C Section 35 amended (Power of Commissioner to prescribe forms)**
- After section 35(1), insert: 35
- (2) For the purposes of the Inland Revenue Acts, the Commissioner may allow a person to provide the information required in a prescribed form in a manner

other than writing if the Commissioner is satisfied that in the circumstances it is appropriate.

**102 ~~New section 45E inserted (Provisional tax attribution reconciliation statement)~~**

~~(1) Before section 46, insert:~~

~~**45E Provisional tax attribution reconciliation statement**~~

~~A company that has one or more shareholders who are provisional tax attributors for the company and a tax year must give the Commissioner and each provisional tax attributor the following information, in the form prescribed by the Commissioner, at the time the company files its annual return of income:~~

- ~~(a) the name and tax file number of each shareholder who is a provisional tax attributor for the tax year; and~~
- ~~(b) the amount of provisional tax paid by the company for the tax in relation to each provisional tax attributor for the tax year under **section RG 40** of the Income Tax Act 2007; and~~
- ~~(c) the amount of tax credit that is transferred from the company to each provisional tax attributor for the purposes of **section LB 2(2)** of the Income Tax Act 2007.~~

~~(2) This section applies for the 2018–19 and later income years.~~

**102B Section 54E amended (RLWT certificate of exemption)**

Replace section 54E(3)(b) and (c) with:

- (b) has had tax obligations under the Inland Revenue Acts (**obligations**) for the 2 years before applying for the certificate, or has an associate (the **counted associate**) that has had obligations for the 2 years before the person applies for the certificate and the counted associate is,—
  - (i) in the same group of companies as the person; or
  - (ii) if the person is a limited partnership, a partner of the person; and
- (c) has complied with all obligations for the 2 years before the person applies for the certificate, or the counted associate has complied with all obligations for the 2 years before the person applies for the certificate.

**103 Section 81 amended (Officers to maintain secrecy)**

After section 81(4)(s), insert:

- (sb) communicating, for the purpose of **section 85M**, information relating to some offences under the Companies Act 1993 to the Registrar of Companies:
- (sc) communicating, for the purpose of **section 85N**, information relating to a taxpayer and reportable unpaid tax to an approved credit reporting agency:

**104 New sections 85M and 85N inserted**

After section 85L, insert:

- 85M Disclosure of information relating to some offences to the Registrar of Companies**
- (1) The purpose of this section is to facilitate the exchange between the Commissioner and the Registrar of Companies (the **Registrar**) of information for the purpose of preventing, detecting, investigating, or providing evidence of, some offences under the Companies Act 1993 that have been, are being, or will be committed. 5
- (2) The Commissioner may communicate the information only if— 10
- (a) the Commissioner or the Registrar reasonably suspects that—
- (i) an offence under section 138A(1), 377, 382(4), 383(6), 385(9), 385AA(9), or 386A(2) of the Companies Act 1993 has been, is being, or will be committed; and
- (ii) the information is relevant for the purposes of preventing, detecting, investigating, or providing evidence of, the offence; and 15
- (b) the Commissioner is satisfied that the information is readily available, that it is reasonable and practicable to communicate the information, and that communication of the information is in the public interest.
- 85N Disclosure of information to approved credit reporting agencies** 20
- (1) The purpose of this section is to facilitate the exchange between the Commissioner and approved credit reporting agencies of information relating to a taxpayer's reportable unpaid tax.
- (2) ~~This section applies~~ **Subsections (4), (5) and (6) apply** when—
- (a) a taxpayer has an amount of reportable unpaid tax; and 25
- (b) the Commissioner has formally notified the taxpayer that—
- (i) the taxpayer has reportable unpaid tax; and
- (ii) the Commissioner may give an approved credit reporting agency information in relation to the taxpayer and any amount of reportable unpaid tax under this section; and 30
- (c) the Commissioner has made reasonable efforts to recover reportable unpaid tax from the taxpayer before the day on which the taxpayer is formally notified under **paragraph (b)**; and
- (d) 30 days after the formal notification under **paragraph (b)**,— 35
- (i) the taxpayer has an amount of reportable unpaid tax that is— greater than the amount prescribed, from time to time, by the Governor-General by Order in Council:
- (A) ~~greater than \$150,000; but~~

- ~~(B) if the Governor General has prescribed an amount by Order in Council for the purposes of this section, greater than that prescribed amount:~~
- (ii) the taxpayer has an amount of reportable unpaid tax that has been unpaid for a year, and, in the Commissioner's judgement, the proportion of the unpaid amount to the taxpayer's assessable income for ~~the~~that year is 30% or more. 5
- (3) ~~This section also applies~~ **Subsections (4), (5) and (6)** also apply when—
- (a) a taxpayer has an amount of reportable unpaid tax; and
- (b) the Commissioner has formally notified the taxpayer that— 10
- (i) the taxpayer has reportable unpaid tax; and
- (ii) the Commissioner may give an approved credit reporting agency information in relation to the taxpayer and any amount of reportable unpaid tax under this section; and
- (c) the Commissioner has formally notified the taxpayer under **subsection (2)(b)** twice in the year before the notice in **paragraph (b)** of this subsection, but did not communicate information relating to the taxpayer under **subsection (4) or (5)** in the year, because the taxpayer partially paid the total relevant amount of reportable unpaid tax; and 15
- (d) the Commissioner has made reasonable efforts to recover an amount of reportable unpaid tax from the taxpayer before the day on which the taxpayer is formally notified under **paragraph (b)** of this subsection; ~~and~~ 20
- ~~(e) but for amounts paid to the Commissioner in the 2 periods of 30 days after the days on which the Commissioner has formally notified the taxpayer under **subsection (2)(b)**, this section would have applied, as provided by **subsection (2)**, 30 days after both of those notices.~~ 25
- (4) The Commissioner may communicate to an approved credit reporting agency information relating to the taxpayer and any amount of reportable unpaid tax for the purposes of—
- (a) enabling the approved credit reporting agency to include information in the taxpayer's credit report; and 30
- (b) evidencing and maintaining the accuracy of the credit report in relation to the information.
- (5) The Commissioner may also communicate to an approved credit reporting agency information for the purposes described in **subsection (4)** if— 35
- (a) the information relates to the taxpayer and any amount that would be reportable unpaid tax if it was not subject to an instalment arrangement requested by the taxpayer and entered into by the Commissioner (the **instalment arrangement**); and

- (b) the instalment arrangement was entered into by the Commissioner after the Commissioner has communicated to an approved credit reporting agency information relating to the taxpayer under **subsection (4)**.
- (6) The Commissioner may not communicate to an approved credit reporting agency until the Commissioner has finished considering an application under section 177 or 183H, if the application was made in the 30 days after the day on which the taxpayer is formally notified under **subsection (2)(b) or (3)(b)**. 5
- (7) The Commissioner must publish annually, in a publication chosen by the Commissioner, the following:
- (a) the number of taxpayers that the Commissioner has formally notified under this section in the previous tax year; and 10
- (b) the number of taxpayers that the Commissioner has communicated information in relation to, under **subsection (4) or (5)**, in relation to which the Commissioner has given information to an approved credit reporting agency in the previous tax year; and 15
- (c) ~~the number of taxpayers that have ceased having reportable unpaid tax in the previous year and which had been formally notified under this section at some time~~ the number of taxpayers that the Commissioner has formally notified and communicated information in relation to, under **subsection (4) or (5)**, but who paid the total relevant amount of reportable unpaid tax in the previous tax year; and 20
- (d) any other matter relating to the Commissioner's use of this section that the Commissioner decides it is appropriate to publish, including revoking an approval under **subsection (8)**.
- (8) The Commissioner may approve, or revoke the approval of, an organisation described in **subsection (9)(a)** ~~for the purposes of the definition in that subsection~~, if the approval or revocation positively affects the integrity of the tax system. 25
- (9) For the purposes of this Part, **approved credit reporting agency** means an organisation that— 30
- (a) carries on a business of reporting to other organisations, for payment, information relevant to the assessment of a person's creditworthiness; and
- (b) ~~has been~~ is approved by the Commissioner under **subsection (8)**; and
- (c) the Commissioner has published the name of, in a publication chosen by the Commissioner. 35
- (10) For the purposes of this Part, **credit report** means credit information about a person that is disclosed by an approved credit reporting agency.
- (11) For the purposes of this Part, **reportable unpaid tax**—
- (a) means, for a taxpayer, unpaid tax—

- (i) that results from liability for or excess refunds of income tax, excluding refunds under section MF 5 or MF 6 of the Income Tax Act 2007, or is otherwise the overpayment or over-crediting of WFF tax credits; and
- (ii) that results from liability for or refunds of GST, amounts required to be deducted under the PAYE rules, amounts required to be deducted under the Student Loan Scheme Act 2011, amounts required to be deducted under the Child Support Act 1991, ESCT, RSCT, or any tax credits under Part L of the Income Tax Act 2007 excluding tax credits under section LB 4 of that Act; and
- (iii) that is not subject to a dispute or challenge under Part 4A or 8A of this Act; and
- (iv) that is not subject to an instalment arrangement requested by the taxpayer and entered into by the Commissioner; and
- (b) includes, for a taxpayer, unpaid interest under Part 7 and unpaid civil penalties, to the extent to which they relate to an amount of reportable unpaid tax described in **paragraph (a)**.

**105 Section 113A amended (Correction of minor errors in subsequent returns)**

In section 113A(1)(c), replace “\$500 or less.” with “\$1,000 or less.”

**106 Section 120C amended (Definitions)**

In section 120C(1), in the definition of **date interest starts**,—

- (a) in paragraph (b), in the words before the subparagraphs, replace “GST” with “a GST refund provided by section 19C(8) or 20(5) of the Goods and Services Tax Act 1985”;
- (b) in paragraph (c), in the words before the subparagraphs, replace “a GST refund” with “a GST refund provided by section 19C(8) or 20(5) of the Goods and Services Tax Act 1985”;
- (c) repeal paragraph (c)(iii).

~~**107 Section 120C amended (Definitions)**~~

~~(1) After **section 120C(2)**, insert:~~

~~(2B) Despite subsection (2), for some standard method provisional taxpayers who fail to pay the amount of 1 or both of the first 2 instalments on the relevant instalment dates for the tax year (a **failed instalment**), the amount of unpaid tax for a failed instalment is given by **section 120KBB(3)**.~~

~~(2) This section applies for the 2017–18 and later income years.~~

**108 Section 120KB amended (Provisional tax instalments and due dates generally)**

(1) In section 120KB(4), replace “120KC” with “**120KBB**”.

(2) This section applies for the 2017–18 and later income years.

**109 New section 120KBB inserted (Interest for most standard method and some estimation method provisional taxpayers)**

(1) After section 120KB, insert:

**120KBB Interest for most standard method and some estimation method provisional taxpayers**

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(1) This section applies if, for a tax year ~~that is not a transitional year for~~ and a provisional taxpayer (the **person**), ~~the person is not a new provisional taxpayer, and~~—

(a) **section 120KE** does not apply for the person for the tax year (*for example*: a person does not make a required payment, so **section 120KE** does not apply); and

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(b) the person is an interest concession provisional taxpayer ~~liable to pay provisional tax for the tax year and uses 1 of the standard methods described in section RC 5(2) or (3) of the Income Tax Act 2007 for the tax year~~; and

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(c) all standard method provisional tax associates of the person that are liable to pay provisional tax are either interest concession provisional taxpayers or use, for the tax year, either the GST ratio method described in section RC 5(6) of that Act or 1 of the standard methods described in section RC 5(2) or (3) of that Act ~~the Income Tax Act 2007~~; and

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(d) there is no provisional tax interest avoidance arrangement in relation to the person.

(2) If the person pays the amount of the ~~first 2~~ instalments for the tax year other than the last 1, on or before the first 2 ~~those relevant~~ instalment dates for the tax year in accordance with **sections RC 9 and RC 10** of the Income Tax Act 2007, then, despite section 120KB(2) of this Act,—

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(a) the person's residual income tax for the tax year is not due and payable as set out in **section RC 9** of the Income Tax Act 2007 for those ~~first 2~~ relevant instalment dates; and

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(b) the amount of their residual income tax minus the total amount of ~~the first 2~~ those relevant instalments for the tax year is due and payable on the ~~third last~~ instalment date for the tax year. A negative amount is treated as overpaid tax on the ~~third last~~ instalment date, with nothing due and payable on the date.

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(3) If the person fails to pay the amount of ~~1 or both of the first 2 instalments or any instalments for the tax year other than the last 1 on or before the relevant instalment dates for the tax year (a failed instalment)~~ in accordance with **sections RC 9 and RC 10** of the Income Tax Act 2007, then, despite section 120KB(2) of this Act,—

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- (a) the person's residual income tax is not due and payable as set out in **section RC 9** of the Income Tax Act 2007 for ~~the failed~~ an instalment; and
- (b) the amount of unpaid tax that a person has in relation to an ~~a failed~~ instalment is equal to the lesser of the following amounts, treating a negative amount as zero: 5
- (i) 1 divided by the number of instalment dates for the tax year, multiplied by one third of their residual income tax, minus the amount paid in relation to the ~~failed~~ instalment:
- (ii) the amount they are liable to pay in accordance with **sections RC 9 and RC 10** of the Income Tax Act 2007 in relation to the ~~failed~~ instalment date minus the amount paid in relation to the ~~failed~~ instalment date; ~~and~~. 10
- (c) ~~one third of the person's residual income tax is due and payable as set out in section RC 9 of the Income Tax Act 2007 for an instalment date that is not a failed instalment.~~ 15
- (4) In this Part,—
- (aa) interest concession provisional taxpayer means a person that is liable to pay provisional tax for an income year if—
- (i) the person uses 1 of the standard methods described in section RC 5(2) or (3) of the Income Tax Act 2007 for the tax year; 20
- (ii) the person uses the estimation method described in section RC 5(5) of that Act but their payments of provisional tax on or before the instalment dates for the tax year, other than the last 1, are not under the estimation method and are equal to the amounts given by section RC 10 of that Act, using section RC 10(3)(a)(i) or (ii) as applicable, for those relevant instalments; 25
- (a) **provisional tax interest avoidance arrangement** means an arrangement involving the manipulation of 1 or more amounts of residual income tax, including a zero amount of residual income tax, with the purpose or effect of defeating the intent and application of this Part: 30
- (b) ~~standard method~~ **provisional tax associate** means, for a person (person A),—
- (i) if person A is a company, another company in the same wholly-owned group of companies as person A:
- (ii) if person A is a company, another person that is associated with person A under section YB 3 of the Income Tax Act 2007, treating section YB 3 as requiring 50% voting interests and market value interests instead of 25% and also ignoring section YB 3(3) and (4); 35
- (iii) if person A is not a company or is a company acting as a trustee, another person that is associated with person A, treating section 40

YB 3 of the Income Tax Act 2007 as requiring 50% voting interests and market value interests, instead of 25% and also ignoring section YB 3(3) and (4).

- (2) This section applies for the 2017–18 and later income years.

**110 Section 120KE amended (Provisional tax and rules on use of money interest)** 5

- (1) Replace section 120KE(1)(a) with:

- (a) they have paid all ~~3~~ instalments ~~or under 1 of the standard methods described in section RC 5(2) or (3) of the Income Tax Act 2007 on or before the instalment dates for the tax year in accordance with sections RC 9 and RC 10 of the Income Tax Act 2007~~ that Act, or they have no obligation to pay provisional tax for the tax year under section RC 3(3) of that Act; and 10

- (2) In section 120KE(1)(b), replace “\$50,000” with “\$60,000”.

- (3) ~~After section 120KE(1)(d), insert:~~ Replace section 120KE(1)(e) with: 15

- ~~(e)~~ there is no provisional tax interest avoidance arrangement in relation to the person; ~~and~~

- (4) This section applies for the 2017–18 and later income years.

~~**111 Section 120L amended (Meaning of unpaid tax and overpaid tax for provisional tax purposes)**~~ 20

~~After section 120L(1), insert:~~

- ~~(1B) For the purposes of determining amounts of unpaid tax, overpaid tax, and interest under a provision of this Part for an instalment date for a tax year, —~~

- ~~(a) for a provisional tax attributor that is a provisional taxpayer for the year, —~~ 25

- ~~(i) the total shareholder attributed amounts for the year, described in **section RC 10(3C)(b)** of the Income Tax Act 2007, are pro-rated against all instalments for the year; and~~

- ~~(ii) if there is an amount of overpaid or underpaid tax under a provision for the instalment, the pro-rated amount for the instalment is subtracted from the underpaid tax amount or added to the overpaid tax amount under the provision; and~~ 30

- ~~(iii) to the extent to which **subparagraph (ii)** does not apply for the pro-rated amount for the instalment, the amount is overpaid tax under the provision for an instalment:~~ 35

- ~~(b) for a company that has 1 or more shareholders who are provisional tax attributors, —~~

- (i) ~~the total company attributed amounts for the year, described in **section RC 10(3C)(c)** of the Income Tax Act 2007, are pro-rated against all instalments for the year; and~~
  - (ii) ~~if there is an amount of overpaid or underpaid tax under a provision for the instalment, the pro-rated amount for the instalment is added to the underpaid tax amount or subtracted from the overpaid tax amount under the provision; and~~ 5
  - (iii) ~~to the extent to which **subparagraph (ii)** does not apply for the pro-rated amount for the instalment, the amount is underpaid tax under the provision for an instalment.~~ 10
- (1C) ~~If **section 120KBB(2)** applies to a provisional tax attributor, **subsection (1B)(a)** does not apply, and—~~
- (a) ~~if there is an amount of overpaid or underpaid tax under **section 120KBB** for the third instalment, the attributor's total shareholder attributed amounts are subtracted from the underpaid tax amount or added to the overpaid amount under section 120KBB; and~~ 15
  - (b) ~~to the extent to which **paragraph (a)** does not apply for total shareholder attributed amounts, the amounts are overpaid tax under **section 120KBB(2)** for the third instalment.~~
- (1D) ~~If **section 120KBB(2)** applies to a company that has 1 or more shareholders who are provisional tax attributors, **subsection (1B)(b)** does not apply, and—~~ 20
- (a) ~~if there is an amount of overpaid or underpaid tax under **section 120KBB** for the third instalment, the company's total company attributed amounts are added to the underpaid tax amount or subtracted from the overpaid tax amount under **section 120KBB**; and~~ 25
  - (b) ~~to the extent to which **paragraph (a)** does not apply for total shareholder attributed amounts, the amounts are underpaid tax under **section 120KBB(2)** for the third instalment.~~
- (1E) ~~For the purposes of determining the amounts of unpaid tax or overpaid tax for an instalment for a tax year, the residual income tax for the year of a company that has a shareholder who is a provisional tax attributor is increased by the amount of that shareholder's residual income tax for the year, if—~~ 30
- (a) ~~the shareholder is not a provisional taxpayer because **section RC 3(4)** of the Income Tax Act 2007 applies; and~~
  - (b) ~~the shareholder's residual income tax for the year is \$60,000 or more for the year.~~ 35
- (1F) ~~If **subsection (1E)** applies for a company and a shareholder, the company's company attributed amount for the year relating to the shareholder is excluded from the company's total company attributed amounts for the year under **subsection (1B)(b)(i)**.~~ 40

**111B New section 120VC inserted (Interest on some provisional tax)**

(1) Before section 120W, insert:

**120VC Interest on some provisional tax**

No interest shall be payable by the Commissioner under section 120D(3) on an amount of provisional tax prior to the last instalment if section 120KBB applies for the provisional tax.

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(2) This section applies for the 2017–18 and later income years.

**112 Section 138E amended (Certain rights of challenge not conferred)**

In section 138E(1)(e)(iv), replace “138N” with “138N, **139B**”.

**113 Section 139B amended (Late payment penalty)**

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(1) In section 139B(1), replace “the due date (the **default date**)” with “the default date”.

(2) In section 139B(1)(b), replace “the taxpayer has failed to pay on time” with “the Commissioner determines that the taxpayer has failed to pay on time”.

(3) In section 139B(1)(c), replace “the taxpayer has paid on time all amounts” with “the Commissioner determines that the taxpayer has paid on time amounts”.

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(4) After section 139B(1), insert:

(1B) When determining whether a person has paid amounts of tax on time or failed to pay amounts of tax on time under **subsection (1)(b) or (c)**, the Commissioner has a discretion to ignore any failure to pay tax on time for any tax type that the Commissioner decides it is appropriate to ignore. The discretion may only be exercised if—

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(a) it is necessary because of resource constraints imposed on the Commissioner during the period of co-existence of 2 Inland Revenue Department software platforms; and

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(b) it does not impose a penalty greater than that which the person would otherwise be liable for in the absence of this subsection.

(5) Before section 139B(6)(a), insert:

(aa) the term **default date** means, for an amount of tax,—

(i) its due date; or

30

(ii) its collection date, described in **section 142A(6)**, if the amount has a new due date set under **section 142A(5)**;

**114 Section 139B amended (Late payment penalty)**

(1) After **section 139B(2)**, insert:

(2B) Despite subsection (2)(b), a taxpayer is not liable to pay an incremental late payment penalty to the extent to which the relevant tax to pay is—

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- (a) GST for a GST return period ending within ~~78~~ days of 31 March 2017:
- (b) GST for a GST return period ending after 31 March 2017:
- (c) provisional tax or income tax for the 2017–18 or later income years:
- (d) described in section MF 5 or MF 6 of the Income Tax Act 2007, or is otherwise the overpayment or over-crediting of WFF tax credits, and relates to the 2017–18 or later income years: 5
- (e) civil penalties for tax and periods described in paragraphs (a) to (d).
- (2) In section 139B(3B), replace “section 157 of this Act” with “**section 24LC(2)** or 157 of this Act”.
- (3) In section 139B(5A), replace “section 157 of this Act” with “**section 24LC(2)** or 157 of this Act”. 10
- (4) After section 139B(6)(b), insert:
- (bb) for a person that **section 120KBB** applies to, the term **unpaid tax** includes, for a failure to pay 1 or both of the first 2 instalments of provisional tax on the relevant instalment dates for the tax year, the amount of unpaid tax given by **section 120KBB(3)** for the date: 15
- (5) **Subsection (4)** applies for the 2017–18 and later income years.
- 115 Section 139BA amended (Imposition of late payment penalties when financial relief sought)**
- (1) In section 139BA(1), replace “due date” with “default date”. 20
- (2) In section 139BA(2), replace “due date” with “default date”.
- 116 Section 139C amended (Late payment penalty and provisional tax)**
- (1) In section 139C(1), replace “Subsection (1B) overrides this subsection” with “Subsection (1B) overrides this subsection and **subsection (1D)** modifies this subsection”. 25
- (2) After section 139C(1C), insert:
- (1D) Despite subsection (1), for a person that **section 120KBB** applies to, the only amount of unpaid tax for a ~~failure to pay 1 or both of the first 2 instalments of provisional tax on the relevant instalment dates for the tax year~~ failed instalment described in **section 120KBB(3)** is the amount of unpaid tax given by **section 120KBB(3)(b)** for the date. 30
- (3) This section applies for the 2017–18 and later income years.
- 117 Section 142A amended (New due date for payment of tax that is not a penalty)**
- (1) In section 142A(1), replace “This section applies” with “Subsection (2) applies for a transfer concession tax type”. 35
- (2) Replace section 142A(5) with:

- (4) **Subsections (5), (6), and (7)** apply for a tax type that is not a transfer concession tax type if the Commissioner makes for a taxpayer, other than by an assessment (an **electronic default assessment**) made in the absence of a return and to which section 106(2) applies,—
- (a) an assessment (the **new assessment**) of tax for the taxpayer, if the taxpayer has not been assessed earlier for the tax, except by an electronic default assessment: 5
- (b) an amended assessment (the **increased assessment**)—
- (i) to which **paragraph (a)** does not apply; and
- (ii) of an amount of tax exceeding the amount for which the taxpayer is liable immediately before the increased assessment; and 10
- (iii) made less than 30 days before, or on or after, the due date for the tax for which the taxpayer is liable immediately before the increased assessment.
- (5) The date of the notice of the relevant assessment is the due date for the payment of— 15
- (a) the tax under a new assessment:
- (b) the increase of tax under an increased assessment.
- (6) Despite **subsection (5)**,—
- (a) the Commissioner must fix a date (the **collection date**) before which the Commissioner must not require payment of the tax or increased tax; and 20
- (b) the collection date must be 30 or more days after the due date set under **subsection (5)**; and
- (c) the Commissioner must not take any action to collect the tax or increased tax before the collection date, other than under section RM 10(3) of the Income Tax Act 2007 or section 46(6) of the Goods and Services Tax Act 1985. 25
- (7) The Commissioner must give notice, in the notice of assessment, of the collection date and that—
- (a) the Commissioner does not require payment of the tax or increased tax before the collection date; but 30
- (b) despite the collection date, any refund of tax that the taxpayer is entitled to may be credited against the tax or increased tax before the collection date, under section RM 10(3) of the Income Tax Act 2007 or section 46(6) of the Goods and Services Tax Act 1985. 35
- (8) **Subsections (5), (6), and (7)** do not apply—
- (a) to any provisional tax that remains unpaid on an instalment date; or
- (b) if the Commissioner has notified the taxpayer before the due date for the payment of the tax that **subsections (5), (6), and (7)** will not apply in

- respect of the tax as calculated by the taxpayer, or in respect of an amount of tax estimated by the taxpayer; or
- (c) if the Commissioner considers that setting a collection date may prejudice the Commissioner’s ability to recover the tax or increased tax.
- (9) In this section,— 5
- (a) **transfer concession tax type** means a tax type for which the Commissioner decides it is appropriate to allow a concession from **subsection (4)**, and the concession is necessary because of resource constraints imposed on the Commissioner during the period of co-existence of 2 Inland Revenue Department software platforms: 10
- (b) **tax** does not include a civil penalty.

**118 Section 142B amended (Due date for shortfall penalties)**

Replace section 142B(1)(a)(ii) with:

- (ii) which has a new due date set under section 142A(2), on the due date for the payment of the unpaid tax; or 15
- (iii) which has a new due date set under **section 142A(5)**, on the collection date, described in **section 142A(6)**, for the unpaid tax:

**119 Section 173L amended (Transfer of excess tax within taxpayer’s accounts)**

(1) Replace section 173L(1) with:

- (1) A taxpayer or their agent may request that the Commissioner transfer an amount of the excess to another period or another tax type of the taxpayer. If the date chosen under **subsection (2)** is after the start of the requested period for the taxpayer, the maximum amount that the Commissioner may transfer is the total of— 20
- (a) debt owing by the taxpayer to the Commissioner for the requested period at the date chosen under **subsection (2)**; and 25
- (b) the taxpayer’s deferrable tax for the requested period at the date chosen under **subsection (2)**; and
- (c) the amount of an adjustment for the requested period under a notice of proposed adjustment, if there is no deferrable tax under **paragraph (b)** for the period; and 30
- (d) any amount agreed with the Commissioner.

(2) In section 173L(2), in the words before the paragraphs, replace “all or part of the excess” with “the amount”.

(3) In section 173L(2)(a), replace “GST refund” with “GST refund provided by section 19C(8) or 20(5) of the Goods and Services Tax Act 1985”. 35

**120 Section 173M amended (Transfer of excess tax to another taxpayer)**

(1) Replace section 173M(1) with:

- (1) A taxpayer or their agent may request that the Commissioner transfer an amount of the excess to another taxpayer. If the date chosen under **subsection (4)** is after the start of the requested period for the other taxpayer, the maximum amount that the Commissioner may transfer is the total of—
- (a) debt owing by that other taxpayer to the Commissioner at the date chosen under **subsection (4)** for the requested period; and 5
  - (b) the other taxpayer’s deferrable tax at the date chosen under **subsection (4)** for the requested period; and
  - (c) the amount of an adjustment for the requested period under a notice of proposed adjustment, if there is no deferrable tax under **paragraph (b)** for the period; and 10
  - (d) any amount agreed with the Commissioner.
- (2) Replace section 173M(3) with:
- (3) A taxpayer, being a trustee of a family trust, may request a transfer to a beneficiary of the trust. If the date chosen under **subsection (4)** is after the start of the requested period for the beneficiary, the maximum amount that the Commissioner may transfer is the total of— 15
- (a) debt owing by the beneficiary to the Commissioner at the date chosen under **subsection (4)** for the requested period; and
  - (b) the beneficiary’s deferrable tax at the date chosen under **subsection (4)** for the requested period; and 20
  - (c) the amount of an adjustment for the requested period under a notice of proposed adjustment, if there is no deferrable tax under **paragraph (b)** for the period; and
  - (d) any amount agreed with the Commissioner. 25
- (3) In section 173M(4), in the words before the paragraphs, replace “all or part of the excess” with “the amount”.

**120B Section 173S amended (Transfers of interest on overpaid tax)**

After section 173S(2), insert:

- (3) If the date under subsection (2) is after the start of the requested period for the taxpayer or the other taxpayer, the maximum amount that the Commissioner may transfer is the total of— 30
- (a) debt owing by the taxpayer, or by the other taxpayer as the case may be, to the Commissioner for the requested period at the date under subsection (2); and 35
  - (b) the taxpayer’s, or the other taxpayer’s as the case may be, deferrable tax for the requested period at the date under subsection (1); and

- (c) the amount of an adjustment for the requested period under a notice of proposed adjustment, if there is no deferrable tax under **paragraph (b)** for the period; and
- (d) any amount agreed with the Commissioner.

**120C Section 183C amended (Cancellation of interest)**

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After section 183C(4), insert:

**(4B) Subsection (4C) applies, if—**

- (a) the Commissioner issues another statement of account (the **second statement**) to a taxpayer within 30 days of a statement described in subsection (4) (the **first statement**); and
- (b) the first and second statements are for GST and penalties related to the GST; and
- (c) the liability for GST is the same in the first and second statements; and
- (d) the GST and related penalties in the second statement, together with any interest payable under Part 7 in relation to the period before the date of the first statement is paid to the Commissioner on or before the 30th day after the date on which the second statement of account is issued, or the due date of the tax, whichever occurs first.

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**(4C) The Commissioner shall cancel the taxpayer's liability to pay interest under Part 7 in relation to the GST and related penalties for the period commencing on the day after the date on which the first statement is issued and ending with the day on which the payment described in **subsection (4B)(d)** is made.**

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**120D New section 227B (Regulations providing for transitional exemptions and other matters)**

After section 227, insert:

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**227B Regulations providing for transitional exemptions and other matters**

- (1) This section provides a regulation-making power for matters relating to the administration of this Act that—
  - (a) arise during the period of co-existence of 2 Inland Revenue software platforms; and
  - (b) affect the application of this Act in relation to 1 or more taxpayers; and
  - (c) make it necessary in order to achieve an orderly transition to the new software platform for amendments to be made to this Act consistent with the purposes of the Inland Revenue Acts.
- (2) The Governor-General may, by Order in Council on the recommendation of the Minister of Revenue, make regulations—
  - (a) providing transitional and savings provisions—

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- (i) concerning the coming into force of provisions affecting the administration of this Act:
- (ii) that may be in addition to, or in place of, other provisions of this Act:
- (b) prescribing how provisions of this Act must be applied or modified for the purpose set out in **subsection (1)**: 5
- (c) providing that, subject to conditions as may be set out in the regulations, during a specified transitional period,—
- (i) specified provisions of this Act, including definitions, do not apply, or apply with modifications or additions, or both: 10
- (ii) specified terms have the meaning given to them by the regulations:
- (iii) specified provisions repealed or amended in this Act are to continue to apply:
- (d) specifying categories of persons who may be exempted from some or all of an obligation under this Act: 15
- (e) providing for any other matters that may be required to achieve the purpose set out in **subsection (1)**.
- (3) Regulations made under this section may not—
- (a) cause a taxpayer’s liability to be more than the liability they would have under this Act if no regulations were made under this section: 20
- (b) alter or affect the application of—
- (i) the care and management provisions in sections 6 and 6A:
- (ii) the information provisions in sections 16 to 21:
- (iii) the secrecy provisions in Part 4: 25
- (iv) a shortfall penalty under sections 141 to 141K:
- (v) a criminal penalty under sections 143 to 148:
- (c) directly or indirectly remove or diminish the rights of a taxpayer under—
- (i) the disputes provisions in Part 4A: 30
- (ii) the provisions for determinations under Part 5:
- (iii) binding rulings under Part 5A:
- (iv) the objection and challenge provisions in Parts 8 and 8A:
- (v) the provisions relating to remission, relief, and refunds in Part 11:
- (d) have retrospective application. 35
- (4) Regulations made under this section must include a date on which the regulations are revoked, and that date must be no later than 3 years after the date on which they are made.

- (5) The Minister may recommend the making of regulations under this section only if satisfied that—
- (a) the regulations—
    - (i) are necessary to achieve the purpose set out in **subsection (1)**; and 5
    - (ii) are consistent with the purposes of the Inland Revenue Acts; and
    - (iii) are the only legislative option that is practicable in the circumstances; and
  - (b) a consultative process has been undertaken that—
    - (i) includes the distribution of draft regulations and an explanation of the way in which the regulations would meet the requirements of **paragraph (a)** to persons or organisations that represent taxpayers that it is reasonable to consult with for the purposes of this section; and 10
    - (ii) provides a period of consultation of at least 4 weeks. 15
- (6) This section and any unexpired regulations made under this section expire and are repealed on 31 December 2021.

Subpart 3—Amendments to other enactment

**120E Student Loan Scheme Act 2011 amended**  
**This subpart** amends the Student Loan Scheme Act 2011. 20

**120F Section 25 amended (Commissioner may treat certain borrowers as being physically in New Zealand)**  
 After section 25(1)(i), insert:

- (ia) the borrower is undertaking study that meets the requirements of **clause 9A of Schedule 1**; or 25
- (ib) the borrower is undertaking an internship that meets the requirements of **clause 9B of Schedule 1**; or

**121 Section 27E of Student Loan Scheme Act 2011 amended (Commissioner may remove entity’s listing as charity)**  
 In section 27E(3)(b) of the Student Loan Scheme Act 2011, replace “applicant” with “entity”. 30

**122 Schedule 1 amended (Conditions to borrower being treated as being physically in New Zealand)**

(1) In schedule 1, replace clause 1 with:

**1 Definitions** 35  
In this Schedule,—

<u><b>Crown agent</b></u> means a statutory entity named in Part 1 of Schedule 1 of the Crown Entities Act 2004	
<u><b>ENZ</b></u> means Education New Zealand established under Part 21 of the Education Act 1989	
<u><b>government department</b></u> means a department named in Schedule 1 of the State Sector Act 1988	5
<u><b>NZQA</b></u> means the New Zealand Qualifications Authority continued under Part 20 of the Education Act 1989	
<u><b>qualifying government-funded scholarship</b></u> means a scholarship, in respect of study or an internship,—	10
(a) <u>that is partially or fully funded by a government department or a Crown agent; and</u>	
(b) <u>that is assessed by ENZ as being a qualifying scholarship for the purposes of this Act.</u>	
(2) <u>In schedule 1, clause 6(1)(d)(ii), replace “clause 2, 5, 7, 8, or 9” with “clause 2, 5, 7, 8, 9, <b>9A</b>, or <b>9B</b>”.</u>	15
(3) <u>In schedule 1, after clause 9, insert:</u>	
<u><b>9A Condition to government-funded full-time overseas study application</b></u>	
<u>A borrower who makes an application under <b>section 25(1)(ia)</b> must—</u>	
(a) <u>be undertaking study that—</u>	20
(i) <u>the borrower is receiving a qualifying government-funded scholarship in respect of; and</u>	
(ii) <u>is full-time and undertaken overseas; and</u>	
(b) <u>provide the Commissioner with evidence from ENZ verifying that the borrower is receiving a qualifying government-funded scholarship in respect of the study.</u>	25
<u><b>9B Condition to government-funded overseas internship application</b></u>	
<u>A borrower who makes an application under <b>section 25(1)(ib)</b> must—</u>	
(a) <u>be undertaking an internship that—</u>	
(i) <u>the borrower is receiving a qualifying government-funded scholarship in respect of; and</u>	30
(ii) <u>is—</u>	
(A) <u>full-time; or</u>	
(B) <u>if undertaken with part-time study, part-time; and</u>	
(iii) <u>is undertaken overseas; and</u>	35

- (b) provide the Commissioner with evidence from ENZ verifying that the borrower is receiving a qualifying government-funded scholarship in respect of the internship.
- (4) In schedule 1, clause 11(1), replace “(i), and (j)” with “(i), **(ia), (ib)**, and (j)”.

**Schedule 4**  
**New schedule 2 inserted**

s 26

**Schedule 2**  
**Application of CRS standard**

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s 1850

*Items modifying CRS standard*

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|----|--|----|
| 1  | The terms <b>reporting period</b> <del>and</del> , <b>calendar year</b> or <b>other appropriate reporting period</b> , <b>calendar year</b> , and <b>year</b> mean a 12-month period ending with 31 March, unless the context requires a different interpretation. | 10 |
| 2  | Sections I to VII are replaced by the Sections I to VII included in Annex 5 (Wider Approach to the Common Reporting Standard) of the CRS publication, as amended from time to time, modified by <b>items 3 to 12</b> .   |    |
| 3  | In Section I, paragraph C, the words “or with respect to each Financial Account that is opened prior to becoming a Reportable Account” are disregarded.  | 15 |
| 4  | Section I, paragraph F is disregarded.   |    |
| 5  | In Section III, subparagraph C(6), the date reference is replaced by 30 June 2017.   |    |
| 6  | In Section III, paragraph D, the date reference is replaced by the words “30 June 2018, for pre-existing individual accounts that are high value accounts, or 30 June 2019 for pre-existing individual accounts that are lower value accounts”.                    | 20 |
| 7  | In Section V, paragraph A, the date reference is replaced by 30 June 2017.   |    |
| 8  | In Section V, paragraph B, the date references are replaced by 30 June 2017.   |    |
| 9  | In Section V, subparagraph D(1), the first date reference is replaced by 30 June 2017 and the second date reference is replaced by 30 June 2019.   | 25 |
| 10 | In Section V, subparagraph D(2), the <u>first</u> date reference is replaced by 30 June 2017 and the second date reference is replaced by <u>31 March</u> .  |    |
| 11 | In Section VII, paragraph B, the alternative procedures under the special due diligence rules include the procedure given in paragraph 13 of the Commentary on Section VII.  | 30 |
| 12 | Under Section VII, subparagraph C(4), an entity has the option of treating all dollar amounts referred to in the CRS standard as being in New Zealand dollars.   |    |
| 13 | In Section VIII, subparagraph B(1)(c), the term <b>Non-Reporting Financial Institution</b> includes a person or entity determined by the Commissioner <u>under</u>   | 35 |

	<b>section 91AAW</b> to be a non-reporting financial institution for the purposes of the CRS applied standard.	
14	In Section VIII, subparagraph B(8)(b), the date reference is replaced by 1 July 2017.	
15	In Section VIII, subparagraph B(9)(a), the date reference is replaced by 30 June 2017.	5
16	In Section VIII, subparagraph B(9)(d), the date reference is replaced by 30 June 2018.	
17	In Section VIII, subparagraph C(9), the definition of the term <b>Preexisting Account</b> is the replacement definition given in paragraph 82 of the Commentary on Section VIII, with the date reference in subparagraph (a) of the replacement definition being 30 June 2017.	10
18	In Section VIII, subparagraph C(10), the definition of the term <b>New Account</b> is—  <b>New Account</b> means a Financial Account maintained by a Reporting Financial Institution that is not a Pre-existing Account.	15
19	In Section VIII, subparagraph C(14), the date reference is replaced by 30 June 2017.	
20	In Section VIII, subparagraph C(15), the <u>first</u> date reference is replaced by 30 June 2017 <u>and the second date reference is replaced by 31 March.</u>	20
21	In Section VIII, subparagraph C(17)(f)(ii), the date reference is replaced by 1 July 2017.	
22	In Section VIII, subparagraph C(17)(g), the term <b>Excluded Account</b> includes an account determined by the Commissioner <u>under section 91AAW</u> to be an excluded account for the purposes of the CRS applied standard.	25
23	In Section VIII, paragraph D(4), the term <b>Reportable Jurisdiction</b> means a jurisdiction identified as a reportable jurisdiction by the Governor-General by Order in Council and not subject at the time to a suspension under an Order in Council or a determination of the Commissioner.	
24	In Section VIII, paragraph D(5), the term <b>Participating Jurisdiction</b> includes New Zealand in addition to jurisdictions determined by the Commissioner to be participating jurisdictions.	30
25	In Section VIII, subparagraph E(4), the definition of the term <b>Related Entity</b> is the replacement definition given in paragraph 82 of the Commentary on Section VIII.	35

**Taxation (Business Tax, Exchange of Information, and  
Remedial Matters) Bill**

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**Legislative history**

8 August 2016  
11 August 2016

Introduction (Bill 149–1)  
First reading and referral to Finance and Expenditure Committee

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Wellington, New Zealand:

Published under the authority of the House of Representatives—2016