

# House of Representatives

# Supplementary Order Paper

Tuesday, 28 September 2021

## Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Bill

### *Proposed amendments*

Hon David Parker, in Committee, to move the following amendments:

#### *Clause 2*

In *clause 2(18)* (page 10, line 27), replace “**92,**” with “**64F, 70B, 85B, 89B, 89C, 89D, 89E, 89F, 89G, 89H, 89I, 89J, 92,**”.

After *clause 2(18)* (page 10, after line 28), insert:

(18B) **Section 89K** comes into force on 15 April 2020.

Replace *clause 2(23)* (page 11, lines 4 and 5) with:

(23) **Sections 48, 49, 55B, 57, 61B, 64B, 64C, 64D, 64E, 80B, 85C, 85D, 127(1B), (1C), (1D), (1E), (3), (4B), (5), (6B), (7B), (7C), (7D), (7E), (8), (10B), (10C), (10D), (13), (16), (16B), (16C), (16D), (17), (17B), (17C), and (18), 131B, and 143B** come into force on 27 March 2021.

In *clause 2(25)* (page 11, line 7), replace “**95(1), 131,**” with “**95(1), 114B, 114C, 114D, 114E, 131,**”.

#### *Clause 48*

Replace *clause 48* (page 43, line 31 to page 44, line 8) with:

**48 Section CB 6A amended (Disposal within 10 years: Bright-line test for residential land)**

(1) Replace section CB 6A(1) to (11) with:

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*Income*

- (1) Subject to quantification under **subsection (8)**, an amount that a person derives from disposing of residential land is income of the person to the extent to which, using a land area test, the amount is for residential land that is—
- (a) 10-year test land:
  - (b) 5-year test land.

*Some definitions*

- (2) In this section and **section CB 16A**,—
- (a) **10-year test land** means residential land to the extent to which, using a land area test, it is not new build land, and, for its disposal, the land's bright-line date is within 10 years of the earliest of any of the applicable dates (**bright-line acquisition dates**) described in **subsections (3) to (7B)**:
  - (b) **5-year test land** means residential land to the extent to which, using a land area test, it is new build land, and,—
    - (i) the person acquires it no later than 12 months after the land first meeting the definition of new build land; and
    - (ii) for its disposal, the land's bright-line date is within 5 years of the earliest of any of the applicable dates (**bright-line acquisition dates**) described in **subsections (3) to (7B)**; and
    - (iii) at the time of its disposal, it is new build land.

*Disposal*

- (3) In the case where none of **subsections (4) to (7B)** are applicable, the bright-line acquisition date for the purposes of the definitions of **10-year test land** and **5-year test land** is—
- (a) the date on which the instrument to transfer the land to the person was registered—
    - (i) under the Land Transfer Act 2017; or
    - (ii) under foreign laws of a similar nature to the Land Transfer Act 2017, if the land is outside New Zealand;or
  - (b) the latest date on which the person acquires the estate or interest in the land, if an instrument to transfer the land to the person is not registered on or before the bright-line date.

*Subdivision*

- (4) In the case where the residential land results from the person subdividing other land (the **undivided land**), the bright-line acquisition

date for the purposes of the definitions of **10-year test land** and **5-year test land** is—

- (a) the date on which the instrument to transfer the undivided land to the person was registered—
  - (i) under the Land Transfer Act 2017; or
  - (ii) under foreign laws of a similar nature to the Land Transfer Act 2017, if the land is outside New Zealand; or
- (b) the latest date on which the person acquires the estate or interest in the undivided land, if the land is not registered as described in paragraph (a) at the bright-line date.

*Leases with perpetual right of renewal*

- (5) In the case where the residential land is a freehold estate in residential land, acquired as the owner of a leasehold estate with a perpetual right of renewal, the bright-line acquisition date for the purposes of the definitions of **10-year test land** and **5-year test land** is the date the leasehold estate was granted.

*Joint tenancy converted to tenancy in common*

- (5B) In the case where the residential land is held as a tenant in common in equal shares, acquired subsequent to it being held as a joint tenant, the bright-line acquisition date for the purposes of the definitions of **10-year test land** and **5-year test land** is the date the joint tenancy was granted.

*Tenancy in common converted to joint tenancy*

- (5C) In the case where the residential land is held as a joint tenant, acquired subsequent to it being held as a tenant in common in equal shares, the bright-line acquisition date for the purposes of the definitions of **10-year test land** and **5-year test land** is the date the tenancy in common in equal shares was granted.

*Estate or interest acquired upon completion of land development or subdivision*

- (6) In the case where the residential land is acquired as the result of the completion of a land development or subdivision, the bright-line acquisition date for the purposes of the definitions of **10-year test land** and **5-year test land** is the date the person enters into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision.

*Special rule: transfers by registration if trustees change*

- (7) In the case where **subsection (3)(a) or (4)(a)** would otherwise apply but the relevant person is a trustee of a trust who has been transferred the land or undivided land, as the case may be, from a

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trustee of the trust, the bright-line acquisition date for the purposes of the definitions of **10-year test land** and **5-year test land** is,—

- (a) for **subsection (3)(a)**,—
  - (i) the earliest 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 (the **first date**), 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 (4)(a)**,—
  - (i) the earliest 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 (the **first undivided date**), if there has been no intervening transfer to a person who is not a trustee; or
  - (ii) the first undivided date following the intervening transfer, if there has been an intervening transfer to a person who is not a trustee.

*Quantification*

- (8) Despite **subsection (1)**, the amount of income that a person (**person A**) derives for disposing of 10-year test land or 5-year test land, as the case may be, is reduced by the amount calculated using the following formula:

$$\text{unadjusted amount} \times (\text{main home days} \times \text{main home percentage} + \text{adjustment days}) / \text{total days}.$$

*Definition of items in formula*

- (9) The items in the formula are defined in **subsections (10) to (11D)**, and **subsection (11E)** provides an exception.

*Unadjusted amount*

- (10) **Unadjusted amount** is person A's amount of income for disposing of the 10-year test land or 5-year test land under **subsection (1)**, ignoring this formula.

*Main home days*

- (11) **Main home days**—
  - (a) is the total number of days in the relevant bright-line period for which the land does not meet the “predominantly” criterion in **section CB 16A(2)**, but nevertheless the land has been used as an excluded main home:

- (b) includes days that would be counted under **section CB 16A(6)**, if **section CB 16A(6)** is applied in relation to **section CB 16A(2)** ignoring the “predominantly” criterion:
- (c) does not include any **adjustment days** described in **subsection (11C)**.

*Main home percentage*

- (11B) **Main home percentage** is the percentage area of the land that, during the **main home days** described **subsection (11)**, has been used as an excluded main home.

*Adjustment days*

- (11C) **Adjustment days** is the total number of days in the relevant bright-line period for which the criteria in section CB 16A(2) are met, including days that are counted under **section CB 16A(6)**.

*Total days*

- (11D) **Total days** is the total number of days in the relevant bright-line period.

*Exception to quantification*

- (11E) **Subsection (8)** does not apply, if person A is described in **section CB 16A(3)**.

*Cost of 10-year test land or 5-year test land in certain circumstances for purposes of disposal*

- (11F) The cost of the 10-year test land or 5-year test land (the **test land**) for person A for the purposes of the disposal referred to in **subsection (8)** is given by **subsection (11G)** if person A acquires the test land from a person (the **original transferor**) in a transaction that meets the requirements of **section CB 6AB**.

*Cost rules*

- (11G) The cost of the test land for person A under this subsection is—
- (a) the cost (the **original acquisition cost**) of the acquisition of the test land by the original transferor, if the consideration for the acquisition of the test land by person A is less than or equal to the original acquisition cost:
  - (b) the consideration for the acquisition of the test land by person A, if the consideration is greater than the original acquisition cost and less than the market value of the test land.

- (2) Replace section CB 6A(14) with:

*A definition*

- (14) In this section, **excluded main home** means, for person A, land that has been used for the relevant period, to some extent, for a dwelling that was a main home for 1 or more of the following people:

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- (a) person A:
  - (b) a beneficiary of a trust, if person A is a trustee of the trust and—
    - (i) a principal settlor of the trust does not have a main home; or
    - (ii) if a principal settlor of the trust does have a main home, it is that main home which person A is disposing of.
- (3) In section CB 6A, list of defined terms,—
- (a) delete “date of acquisition” and “excluded day”:
  - (b) insert “5-year test land” and “10-year test land”.
- (4) **Subsections (1), (2), and (3)** apply to a person’s disposal of residential land, if the person acquires an estate or interest in the land on or after 27 March 2021. However, **subsections (1), (2), and (3)** do not apply if the person makes an offer for the acquisition of the land, on or before 23 March 2021, that is irrevocable before 27 March 2021 and the person acquires an estate or interest in the land on or after 27 March 2021 as a result of that offer. Further, **subsections (1), (2), and (3)** do not apply to—
- (a) a person’s disposal of a freehold estate in residential land that the person acquired as the owner of a leasehold estate with a perpetual right of renewal, if the person was granted the leasehold estate before 27 March 2021:
  - (b) a person’s disposal of an estate or interest in residential land that the person acquired as the result of the completion of a land development or subdivision, if before 27 March 2021 the person entered into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision.

*Clause 49*

Replace *clause 49* (page 44, lines 9 to 29) with:

**49 Section CB 16A amended (Main home exclusion for disposal within 10 years)**

- (1) Replace section CB 16A(1) with:

*Income*

- (1) **Section CB 6A** does not apply to a person (**person A**) who disposes of 10-year test land or 5-year test land, as the case may be, if for all of the days in the relevant bright-line period, the relevant land meets the criteria in subsection (2).

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- (2) In section CB 16A(6), words before the paragraphs, replace “the definition of **excluded day** in section CB 6A(14)(b)” with “the items **main home days** and **adjustment days** described in **section CB 6A(10)(b) and (11C)**”.
- (3) In section CB 16A(6)(b), replace “there is a continuous period” with “there is one or more continuous periods”.
- (4) Replace section CB 16A(6)(c) and (d) with:
- (c) the beginning and the end of a continuous period adjoins either—

  - (i) a period within the bright-line period that meets the criteria; or
  - (ii) the first or last day of the bright-line period; and

(d) the continuous period is—

  - (i) 365 days or less;
  - (ii) in the case of a period during which the person is making reasonable efforts to construct a dwelling intended for use as their main home or as the main home of a person described in section CB 16A(2), that period; and
- (5) In section CB 16A, list of defined terms, insert “5-year test land”, “10-year test land”, and “group of persons”.
- (6) **Subsections (1) to (5)** apply to a person’s disposal of residential land, if the person acquires an estate or interest in the land on or after 27 March 2021. However, **subsections (1) to (5)** do not apply if the person makes an offer for the acquisition of the land, on or before 23 March 2021, that is irrevocable before 27 March 2021 and the person acquires an estate or interest in the land on or after 27 March 2021 as a result of that offer. Further, **subsections (1) to (5)** do not apply to—
- (a) a person’s disposal of a freehold estate in residential land that the person acquired as the owner of a leasehold estate with a perpetual right of renewal, if the person was granted the leasehold estate before 27 March 2021;
  - (b) a person’s disposal of an estate or interest in residential land that the person acquired as the result of the completion of a land development or subdivision, if before 27 March 2021 the person entered into the agreement under which they acquired the estate or interest upon the completion of the land development or subdivision.

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*New clause 55B*

After *clause 55* (page 46, after line 8), insert:

**55B New section CW 62C (Income from foreign-currency loans used for disallowed residential property)**

After section CW 62B, insert:

**CW 62C Income from foreign-currency loans used for disallowed residential property**

An amount of income of a person under section CC 3(1) (Financial arrangements) is exempt income if the person—

- (a) derives the income from a financial arrangement that is a loan of foreign currency to the person; and
- (b) uses the loan proceeds for disallowed residential property; and
- (c) is denied by **section DH 8(1)** (Deduction not allowed) a deduction for interest paid by the person under the financial arrangement.

Defined in this Act: disallowed residential property, exempt income, financial arrangement, interest, income

*New clause 57B*

After *clause 57* (page 46, after line 26), insert:

**57B Section DB 7 amended (Interest: most companies need no nexus with income)**

After section DB 7(6B), insert:

*Relationship with subpart DH*

- (6C) **Subpart DH** (Interest incurred in relation to certain land) overrides this section for interest to which that subpart relates.

*Clause 58*

After *clause 58(1)* (page 46, after line 34), insert:

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

*Relationship with subpart DH*

- (6C) **Subpart DH** (Interest incurred in relation to certain land) overrides this section for interest to which that subpart relates.

*New clause 61B*

After *clause 61* (page 47, after line 29), insert:



**61B Section DB 23C amended (Revenue account property: cost of some residential land reduced)**

(1) In section DB 23C(1), replace “section CB 6A(6)” with “**section CB 6A(8)**”.

(2) Replace section DB 23C(2) to (6) with:

*Excluded adjustment amount formula*

(2) The excluded adjustment amount for the purposes of subsection (1) is calculated using the following formula:

$$\text{cost} \times (\text{main home days} \times \text{main home percentage} + \text{adjustment days}) / \text{total days}.$$

*Definition of items in formula*

(3) The items in the formula are defined in **subsections (4) to (7)**.

*Cost*

(4) **Cost** is the cost of the land.

*Main home days*

(5) **Main home days** has the same meaning as in **section CB 6A(11)**.

*Main home percentage*

(6) **Main home percentage** has the same meaning as in **section CB 6A(11B)**.

*Adjustment days*

(7) **Adjustment days** has the same meaning as in **section CB 6A(11C)**.

*Total days*

(8) **Total days** has the same meaning as in **section CB 6A(11D)**.

*New clauses 64B to 64F*

After *clause 64* (page 48, after line 13), insert:

**64B Section DG 2 amended (Application of this subpart)**

After section DG 2(3), insert:

*Relationship with subpart DH*

(3B) **Subpart DH** (Interest incurred in relation to certain land) applies to interest expenditure apportioned under section DG 8 as being incurred in relation to the income-earning use of land to which this subpart applies.

**64C Section DG 9 amended (Apportionment formula)**

In section DG 9(1), replace “sections DG 8 and DG 11 to DG 13” with “section DG 8”.

**64D Section DG 11 amended (Interest expenditure: close companies)**

- (1) Replace section DG 11(1)(b) with:
- (b) the company incurs interest expenditure for the income year that is not related to disallowed residential property or to an interest in an interposed residential property holder.
- (2) After section DG 11(2), insert:
- Exclude disallowed residential property and related debt and interest*
- (2B) In applying **subsection (2)**, a close company must—
- (a) for an asset that is disallowed residential property and in relation to which the company incurs interest that is subject to apportionment under section DG 8, exclude from the asset value determined for the asset the lesser of—
    - (i) the asset value that would be determined for the asset if this paragraph did not apply to the asset;
    - (ii) the amount of the company’s debt under which the company incurs interest in relation to the asset; and
  - (b) exclude from the company’s debt value the amount of each loan under which the company incurs interest in relation to disallowed residential property or in relation to an interest in an interposed residential property holder; and
  - (c) exclude from the company’s interest expenditure for the income year, the amount of interest that is incurred by the company in relation to disallowed residential property or in relation to an interest in an interposed residential property holder.
- (3) In section DG 11, list of defined terms, insert “disallowed residential property”.

**64E New subpart DH inserted (Interest incurred in relation to certain land)**

After subpart DG, insert:

Subpart DH—Interest incurred in relation to certain land

**DH 1 Interest related to certain land**

The purpose of this subpart is to deny a person a deduction for certain interest, despite any other provision in this Part. The provisions of this subpart override the general permission.

Defined in this Act: amount, deduction, general permission, interest

**DH 2 When this subpart applies**

This subpart applies to interest incurred on or after 1 October 2021.

Defined in this Act: interest

**DH 3 When this subpart applies: companies**

This subpart applies to a company, if—

- (a) the company is a close company, and it is not an exempt Māori company:
- (b) the company is not a close company, and—
  - (i) it is a residential land company; and
  - (ii) it is not a member of a wholly-owned group:
- (c) the company is not a close company, and it is a residential land wholly-owned group member.

Defined in this Act: company, close company, exempt Māori company, residential land company, residential land wholly-owned group member, wholly-owned group

**DH 4 When this subpart does not apply: exemptions for new builds, development, social or emergency or transitional housing, and council housing**

*Exemption: new builds*

- (1) This subpart does not apply to interest incurred by a person to the extent to which it is—
  - (a) incurred in relation to new build land; and
  - (b) incurred before the date that is 20 years after the earliest of the following dates for the new build land:
    - (i) the date on which the code compliance certificate described in **section DH 5(5)** is issued:
    - (ii) the date that, in the records of a local authority or building consent authority, the relevant conversion is recorded as having been “completed”, in the case provided in **section DH 5(5)(d)**:
    - (iii) the date that the relevant building work is entered into the records of a local authority or building consent authority as “substantially completed”, in the case of a code compliance certificate described in **section DH 5(5)** being issued subject to a building consent waiver or modification under clause B2.3.1 of the Building Code under the Building Act 2004.

*Exemption: business relating to land under section CB 7*

- (2) This subpart does not apply to interest incurred by a person to the extent to which it is incurred in relation to land that the person

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holds as part of a business described in section CB 7 (Disposal: land acquired for purposes of business relating to land).

*Exemption: development, division, or building*

- (3) This subpart does not apply to interest incurred by a person to the extent to which it is incurred in relation to land (the **land**) that is subject to the person's undertaking or scheme involving development, division, or building for the purpose of creating new build land. However, the exemption in this subsection ceases, if and to the extent to which—

- (a) the land becomes new build land under **section DH 5(7)**;
- (b) the land is disposed of.

*Exemption: social, emergency, or transitional housing*

- (4) This subpart does not apply to interest incurred by a person to the extent to which the interest is incurred in relation to land that is a dwelling while the dwelling—

- (a) is used by a person referred to in **paragraph (b)** (the **social housing provider**) for the sole purpose of providing 1 or more of—

- (i) social housing as defined in section 2 of the Public and Community Housing Management Act 1992;
- (ii) temporary accommodation for people in need while they seek, or are assisted in finding, more permanent accommodation; and

- (b) is owned or rented by a social housing provider, who is 1 or more of—

- (i) a registered community housing provider under the Public and Community Housing Management Act 1992;
- (ii) Kāinga Ora–Homes and Communities or a wholly-owned subsidiary of Kāinga Ora–Homes and Communities;
- (iii) a department listed in schedule 2, part 1 of the Public Service Act 2020.

*Exemption: council housing*

- (5) This subpart does not apply to interest incurred by a council-controlled organisation, as defined in section 6 of the Local Government Act 2002, to the extent to which the interest is incurred in relation to land that is a dwelling while the dwelling is owned by the council-controlled organisation and used by the council-controlled organisation or a local authority for the sole purpose of pro-

viding housing for people assessed by a local authority as being eligible for accommodation at less than market rental.

*Exemption: Kāinga Ora-Homes and Communities and wholly-owned subsidiaries*

- (6) This subpart does not apply to Kāinga Ora–Homes and Communities and its wholly-owned subsidiaries.

Defined in this Act: code compliance certificate, dwelling, interest, land, local authority, new build land

## DH 5 Key terms

*Code compliance certificate*

- (1) **Code compliance certificate** means a code compliance certificate issued under the Building Act 2004.

*Disallowed residential property*

- (2) **Disallowed residential property**—

(a) means land in New Zealand to the extent to which—

(i) it has a place configured as a residence or abode, whether or not it is used as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place:

(ii) the owner has an arrangement that relates to erecting a place there, configured as a residence or abode, whether or not that place is or is to be used as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place:

(iii) it is bare land that, under rules in the relevant operative district plan, may be used for erecting a place there, configured as a residence or abode, whether or not that place is or is to be used as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place:

(b) does not include land to the extent to which it is excepted residential land.

*Excepted residential land*

- (3) **Excepted residential land** means land to the extent to which it is described in **schedule 15**.

*Exempt Māori company*

- (4) **Exempt Māori company** means—

(a) a company that is a Maori authority or eligible to be a Maori authority, if,—

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- (i) in the case that the company is not a member of a wholly-owned group, it is not a residential land company:
- (ii) in the case that the company is a member of a wholly-owned group, it is not a residential land wholly-owned group member:
- (b) a company that is wholly-owned by a Maori authority or wholly-owned by a company or trust that is eligible to be a Maori authority, if—
  - (i) the wholly-owned company is not a residential land wholly-owned group member:
  - (ii) in the case that the company is wholly-owned by a trust, the wholly-owned company is not a residential land company.

*Grandparented transitional loans*

- (5) **Grandparented transitional loan** means loan amounts, ignoring re-drawings or additional borrowings under the same loan facility on or after 27 March 2021, if the relevant loan facilities were denominated in New Zealand dollars and were—
- (a) first drawn down upon before 27 March 2021 for disallowed residential property:
  - (b) first drawn down upon on or after 27 March 2021 for acquiring disallowed residential property, if the person acquired an estate or interest in the property before 27 March 2021:
  - (c) first drawn down upon on or after 27 March 2021 for acquiring disallowed residential property, if the acquisition of the property resulted from an offer that is—
    - (i) made on or before 23 March 2021; and
    - (ii) irrevocable before 27 March 2021.

*Interposed residential property holder*

- (6) **Interposed residential property holder** means, for a person,—
- (a) a close company for which the person has voting interests or market value interests and the company has, at the end of a quarter in the income year, a residential property percentage of more than 10%:
  - (b) a company that is not a close company for which the person has voting interests or market value interests, and the company has, at any time in the income year, a residential property percentage of more than 50%:

- (c) the trustees of a trust of which the person is a direct or indirect beneficiary, if the relevant trust has, at any time in the income year, a residential property percentage of more than 10%.

*New build land*

(7) **New build land**—

- (a) means land to the extent to which it has a place that is configured as a self-contained residence or abode, if a code compliance certificate has been issued on or after 27 March 2020 evidencing that the place was added to the land; and
- (b) includes, for land described in **paragraph (a)**, land exclusively used by residents of the place and also a reasonable proportion of shared areas of land, appurtenant to the place; and
- (c) includes land for which there is an agreement that a place that is configured as a self-contained residence or abode will be added to the land and a code compliance certificate will be issued on or after 27 March 2020 evidencing that the place was added to the land; and
- (d) includes land that was a hotel or motel, to the extent to which, by a conversion, it becomes places that are configured as self-contained residences or abodes, and the conversion is recorded in the records of a local authority or building consent authority as having been “completed” on or after 27 March 2020.

*Residential land company*

- (8) **Residential land company** means a company for which the ratio calculated using the following formula and expressed as a percentage is equal to or greater than 50% at any time during the relevant income year:

$$(\text{disallowed property} + \text{indirect disallowed property}) \div \text{total assets.}$$

*Definition of items in formula*

- (9) In the formula in **subsection (8)**,—

- (a) **disallowed property** is the value of the company’s property that is disallowed residential property, but excluding property described in **section DH 4(2) or (3)**;
- (b) **indirect disallowed property** is the value of shares that the company holds in other companies that are residential land companies;
- (c) **total assets** is the total value of the company’s property.

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*Residential land wholly-owned group member*

- (10) **Residential land wholly-owned group member** means a company that is a member of a wholly-owned group of companies for which the ratio calculated using the following formula, expressed as a percentage, is equal to or greater than 50% at any time during the relevant income year:

(disallowed property + indirect disallowed property) ÷ total assets.

*Definition of items in formula*

- (11) In the formula in **subsection (10)**,—

- (a) **disallowed property** is the value, on a consolidated basis, of the wholly-owned group’s property that is disallowed residential property, but excluding property described in **section DH 4(2) or (3)**:
- (b) **indirect disallowed property** is the value of shares that the wholly-owned group’s interest holds in non-group companies that are residential land companies:
- (c) **total assets** is the total value, on a consolidated basis, of the wholly-owned group’s property.

Defined in this Act: code compliance certificate, company, disallowed residential property, excepted residential land, grandparented transitional loan, income year, land, new build land, residential land company, residential land wholly-owned group member, trustee, wholly-owned group

**DH 6 Residential property percentage**

*Residential property percentage*

- (1) **Residential property percentage** is the amount, for an interposed residential property holder (the **person**), calculated using the following formula, expressed as a percentage:

disallowed assets ÷ total assets.

*Definition of items in formula*

- (2) In the formula in **subsection (1)**—

- (a) **disallowed assets** means the value of the person’s property that is disallowed residential property, but excluding—
- (i) property described in **section DH 4(1) to (3)**; and
- (ii) for a close company, property that is subject to subpart DG (Expenditure related to use of certain assets):
- (b) **total assets** means the value of the person’s property excluding, for a close company, property that is subject to subpart DG.



*Special rule: interposed residential property holder*

- (3) If the person is a company, the items **disallowed assets** and **total assets** in this section are calculated to also include assets held by lower tier companies to the company by applying section YC 4 (Look-through rule for corporate shareholders), treating the person as the ultimate shareholder, to attribute, in proportion to the relevant voting interests and market value interests under that section, those lower tier assets.

Defined in this Act: close company, disallowed residential property, interposed residential property holder, market value interest, residential property percentage, voting interest

**DH 7 Transitional residential interest**

*Transitional residential interest*

- (1) **Transitional residential interest** means interest, for a person and a grandparented transitional loan, that is,—
- (a) interest for the loan’s principal to the extent to which the interest is incurred for disallowed residential property; or
  - (b) if the loan (the **underlying loan**) is for both disallowed residential property and property that is allowed property described in **subsection (3)(b)**, and the portion incurred for disallowed residential property can not be determined, the portion of underlying interest calculated by reference to a notional loan principal that the person is treated as having used to acquire, on 26 March 2021, the disallowed residential property to which the underlying loan relates. The initial notional loan principal is calculated using the formula in **subsection (2)** and the treatment of repayments is provided in **subsection (4)**.

*Transitional residential interest: loan portion when tracing cannot be determined: initial notional loan balance*

- (2) For the purpose of **subsection (1)(b)**, the notional loan principal is calculated using the following formula, treating a negative amount as zero:

outstanding borrowings – allowed property.

*Definition of items in formula*

- (3) In the formula in **subsection (2)**,—
- (a) **outstanding borrowings** is the principal of the underlying loan, determined on 26 March 2021, to the extent to which it is for both disallowed residential property and property that is allowed property described in **paragraph (b)**;
  - (b) **allowed property** means the total of—

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- (i) the value of the person’s property, determined on 26 March 2021, that is not disallowed residential property, but ignoring property that is not used in deriving assessable income; and
- (ii) to the extent to which the person’s property is disallowed residential property described in **section DH 4**, the value of that property, determined on 26 March 2021:

*Transitional residential interest: repayments*

- (4) A repayment of the underlying loan is applied against the notional loan principal to reduce it. However, if the source of the repayment is the disposal of allowed property described in **subsection (3)(b)**, the notional loan principal is not reduced by the repayment.

Defined in this Act: assessable income, disallowed residential property, grandparented transitional loan, interest, loan

**DH 8 Deduction not allowed**

*Deduction denied*

- (1) A person is denied a deduction for interest if and to the extent to which the interest is—
  - (a) incurred for disallowed residential property, but excluding interest for a grandparented transitional loan:
  - (b) transitional residential interest:
  - (c) incurred in relationship to legal or beneficial ownership of an interposed residential property holder.

*Denial limited: transitional residential interest*

- (2) The amount of the deduction denied for transitional residential interest is limited to the following percentages for the following periods:

<b>Period that transitional residential interest is incurred</b>	<b>Percentage denied</b>
1 October 2021 to 31 March 2022	25%
1 April 2022 to 31 March 2023	25%
1 April 2023 to 31 March 2024	50%
1 April 2024 to 31 March 2025	75%
On and after 1 April 2025	100%

*Denial limited using quarterly calculation periods: owners of interposed residential property holders*

- (3) The amount of the deduction denied for interest (the **interest**) incurred as the owner or to become an owner of an interposed residential

property holder that is a close company is limited, for an income year, to the amount calculated quarterly using the following formula and summed for the entire income year:

interposed interest × interposed residential property percentage.

*Definition of items in formula*

- (4) In the formula in **subsection (3)**—
- (a) **interposed interest** is the interest, to the extent to which it is incurred in the relevant quarterly calculation period:
  - (b) **interposed residential property percentage** means the residential property percentage for the interposed residential property holder, calculated as described in **section DH 6(3)** at the end of the relevant quarterly calculation period.

Defined in this Act: close company, disallowed residential property, deduction, grandparented transitional loan, income year, interest, interposed residential property holder, residential property percentage, transitional residential interest

#### **DH 9 Exception to limited denial of deductions: loans denominated in foreign currencies**

Despite **section DH 8(2) and (3)**, a deduction is denied for all interest to which **section DH 8(1)** applies that is incurred under a loan in foreign currency.

Defined in this Act: deduction, interest, loan

#### **DH 10 Limited denial of deductibility: simplified calculation of interest affected**

*Application of section*

- (1) This section applies to a person who chooses to rely on the method of calculation it contains for calculating interest incurred under some loans and subject to limited denial of deductibility under this subpart.

*Purpose of section*

- (2) This section is intended to simplify the calculation, for a loan that may be drawn down in several tranches, of the amount of interest incurred in the period (the **affected interest period**) from 1 October 2021 to 31 March 2025 that is—
- (a) described in **section DH 8(1)**; and
  - (b) subject to limited denial of deductibility under **section DH 8(2)**.

*Affected loan balance*

- (3) The amount of the loan (the **affected loan balance**) that is allocated to disallowed residential property, and under which interest described in **section DH 8(1)** is incurred, is determined for the

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date (the **start date**) that is the later of 26 March 2021 and the start of the term of the loan.

*Initial loan balance*

- (4) The affected loan balance (the **initial loan balance**) at the start date is used to calculate the amount of interest described in **section DH 8(1)** incurred under the loan until the affected loan balance is adjusted under **subsection (4)**.

*Adjustments to affected loan balance*

- (5) If a further amount is borrowed under the loan after the start date, the affected loan balance is, on the date when the further amount is applied, —
- (a) reduced, if the further amount is applied for a purpose that does not meet the requirements for a loan giving rise to interest described in **section DH 8(1)**; or
  - (b) increased, if the further amount gives rise to interest described in **section DH 8(1)**.

*Interest affected by limited denial of deductibility*

- (6) For the affected interest period, the amount of interest incurred under the loan that is affected by limited denial of deductibility under **section DH 8(2)** is the amount that can be attributed to—
- (a) the initial loan balance, if the affected loan balance equals or exceeds the initial loan balance; or
  - (b) the affected loan balance, if the affected loan balance is less than the initial loan balance.

Defined in this Act: disallowed residential property, interest, loan

**DH 11 Denied amounts: treatment upon disposal of disallowed residential property**

*Disposal subject to section CB 6A or CZ 39: denied amount included as cost*

- (1) An amount that relates to disallowed residential property and is denied under **section DH 8** as a deduction that would have otherwise been allowed for a person is treated under section DB 23 (Cost of revenue account property) as a cost for the person of the disallowed residential property in the income year of the disposal of the disallowed residential property if the amount derived from the disposal is income under section CB 6A or CZ 39 (which relate to disposals of residential land within a given period from acquisition).

*Disposal not subject to section CB 6A or CZ 39: denied amount allocated under section EL 4 or EL 7*

- (2) An amount that relates to disallowed residential property and is denied under **section DH 8** as a deduction that would have otherwise been allowed for a person is allowed under this section as a deduction in the income year of the disposal of the disallowed residential property, and is subject to allocation under subpart EL (Allocation of deductions for excess residential land expenditure), if the amount derived from the disposal of the disallowed residential property—
- (a) is income under a section other than section CB 6A or CZ 39; and
  - (b) is not income under section CB 6A or CZ 39.

Defined in this Act: deduction, disallowed residential property, income, income year

#### **DH 12 Valuation**

*Land not used in undertaking creating new build land*

- (1) For the purposes of this subpart, a person’s land, excluding land described in **section DH 4(2) and (3)**, is—
- (a) valued at its most recent capital value or annual value set by a local authority; or
  - (b) if the land was acquired after the most recent local authority valuation, it is valued at its acquisition cost or, in the case of an associated person acquisition, its market value.

*Land used in undertaking*

- (2) For the purposes of this subpart, to the extent to which **subsection (1)** does not apply for a person’s property, the property is—
- (a) valued using its tax book value; or
  - (b) if the person prepares financial accounts according to relevant accounting standards or legislative standards, valued using the financial accounts’ valuation.

Defined in this Act: associated person, land, local authority, market value

#### **64F Section DT 1A amended (Ring-fenced allocations)**

In section DT 1A(4), replace “and IP 3” with “IP 3, and **IP 3B**”.

*New clause 70B*

After *clause 70* (page 49, after line 8), insert:

#### **70B Section EL 14 amended (Continuity rules for companies)**

In section EL 14, replace “and IP 3” with “IP 3, and **IP 3B**”.

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*New clauses 80B to 80D*

After *clause 80* (page 56, after line 26), insert:

**80B Section FB 3A amended (Residential land)**

- (1) In section FB 3A(3), replace “CB 6A(1) to (5) and CZ 39(2) to (6)”, with “**CB 6A(1) to (7)**, and CZ 39(2) to (6), and **subpart DH**”.
- (2) **Subsection (1)** applies to a transfer of disallowed residential property occurring on or after 27 March 2021.

**80C Section FC 9 amended (Residential land transferred to executor, administrator, or beneficiary on death of person)**

- (1) In the heading to section FC 9, after “**Residential land**”, insert “**or disallowed residential property**”.
- (2) In the section FC 9(1), after “residential land”, insert “or disallowed residential property”.
- (3) In section FC 9(2), after “the residential land”, insert “or disallowed residential property”.
- (4) In section FC 9(3), after “residential land”, insert “or disallowed residential property”.
- (5) After section FC 9(3), insert:

*Cost of disallowed residential property*

- (4) If the disallowed residential property is transferred to a person who disposes of it, and the person derives income, the cost of the disallowed residential property to the person is the lesser of—
  - (a) the cost of the property incurred by the deceased person, if that cost is greater than or equal to the consideration paid by the person for the transfer:
  - (b) the consideration paid by the person for the transfer, if that amount is greater than the cost of the property incurred by the deceased person.

*Date of acquisition*

- (5) For the purposes of sections **CB 6A** and CZ 39 and **subpart DH**, the person referred to in subsection (3) acquires the residential land or disallowed residential property land on the date that the land or property was acquired by the deceased person.
- (6) **Subsection (1)** applies to a transfer of disallowed residential property occurring on or after 27 March 2021.

**80D New cross-heading and sections FC 9B to FC 9E inserted**

After section FC 9, insert:

*Exceptions for residential land transferred to trustees of certain trusts or other entities*

**FC 9B Residential land or disallowed residential property transferred to trustees of certain family trusts**

*What this section applies to*

- (1) This section applies to a transfer by a person (the **transferor**) of residential land or disallowed residential property to the trustees of a trust that meets the requirements of **subsection (2)**.

*Relationships between transferors, beneficiaries, and principal settlors of trust*

- (2) A trust (the **test trust**) meets the requirements of this subsection if—
- (a) each transferor is a beneficiary of the test trust; and
  - (b) a beneficiary that is a transferor meets the requirements in section CB 16A(7) (Main home exclusion for disposal within 10 years) to be a principal settlor of the test trust; and
  - (c) each beneficiary of the test trust, that does not meet the requirements in section CB 16A(7) (the **principal settlor requirements**) to be a principal settlor of the test trust, is 1 or more of—
    - (i) associated under **subsection (3)** with a beneficiary that meets the principal settlor requirements for the test trust;
    - (ii) a company in which a 50% voting interest, or a 50% market value interest if a market value circumstance exists, is owned by a beneficiary of the test trust that meets the requirements of **subparagraph (i)**;
    - (iii) a trustee of another trust having a beneficiary that is also a beneficiary of the test trust meeting the requirements of **subparagraph (i)**;
    - (iv) a charity.

*Associated relatives to the 4th degree*

- (3) Two persons are associated in a way that meets the requirements of this subsection if 1 or more of the following applies:
- (a) they are within 4 degrees of blood relationship, meeting the requirements of **subsection (4)**;
  - (b) they are married, in a civil union, or in a de facto relationship:

- (c) 1 person is within 4 degrees of blood relationship, meeting the requirements of **subsection (4)**, to the other person's spouse, civil union partner, or de facto partner.

*Requirements for determining blood relationship*

- (4) In determining a blood relationship between 2 persons under **subsection (3)**,—
- (a) a child by adoption is treated as a natural child of the adoptive parents and not as a natural child of the birth parents; and
- (b) the requirements of this subsection are not met if each person cannot reasonably be expected to know that both—
- (i) the other person exists:
- (ii) the person is within 4 or fewer degrees of blood relationship to the other person.

*Sections **CB 6A** and CZ 39: transfer at cost and time of acquisition for transferors*

- (5) For the purposes of sections **CB 6A(1) to (5)** and CZ 39(2) to (6), if the consideration received by the transferors for the residential land is less than or equal to the total cost of the residential land to the transferors at the date of transfer—
- (a) the transfer is treated as a disposal and acquisition for an amount that equals the total cost of the residential land to the transferors at the date of transfer; and
- (b) the trustee of the test trust is treated as acquiring the residential land on the date that the property was acquired by the transferors.

**Subpart DH: date of acquisition**

- (6) For the purposes of **subpart DH** (Interest incurred in relation to certain land), the trustee of the test trust is treated as acquiring the residential land or disallowed residential property on the date that the property was acquired by the transferors.

Defined in this Act: beneficiary, cost, disallowed residential property, dispose, principal settlor, residential land, trust, trustee

**FC 9C Residential land or disallowed residential property transferred to Maori authorities, or eligible persons, as trustees of certain family trusts**

*What this section applies to*

- (1) This section applies to a transfer by a person (the **transferor**) of residential land, or disallowed residential property, subject to the Te Ture Whenua Māori Act 1993 to a Maori authority, or a person eli-



gible to be a Maori authority, as the trustee of a trust that meets the requirements of **subsection (2)**.

*Relationships between transferors and beneficiaries of trust*

- (2) A trust (the **test trust**) meets the requirements of this subsection if each transferor is a beneficiary of the test trust and—
- (a) each transferor and each beneficiary of the test trust is a member of the same iwi or hapū as the other transferors and beneficiaries; or
  - (b) each transferor and each beneficiary of the test trust is a descendant of the same tipuna (living or dead) as the other transferors and beneficiaries.

*Sections **CB 6A** and CZ 39: transfer at cost and time of acquisition for transferor*

- (3) For the purposes of sections **CB 6A(1) to (5)** and CZ 39(2) to (6), if the consideration received by the transferor for the residential land is less than or equal to the total cost of the residential land to the transferor at the date of transfer—
- (a) the transfer is treated as a disposal and acquisition for an amount that equals the total cost of the residential land to the transferor at the date of transfer; and
  - (b) the trustee of the test trust is treated as acquiring the residential land on the date that the property was acquired by the transferors.

**Subpart DH: date of acquisition**

- (4) For the purposes of **subpart DH** (Interest incurred in relation to certain land), the trustee of the test trust is treated as acquiring the residential land or disallowed residential property on the date that the property was acquired by the transferors.

Defined in this Act: beneficiary, disallowed residential property, dispose, Maori authority, residential land, trust, trustee

**FC 9D Transfer of residential land or disallowed residential property included in settlement of claim under the Treaty of Waitangi**

*What this section applies to*

- (1) This section applies to a transfer by a person (the **transferor**) of residential land, or disallowed residential property, that is subject to the Te Ture Whenua Māori Act 1993 and is part of the settlement of a claim under the Treaty of Waitangi to a person who is—
- (a) a trustee of a trust who is a Maori authority, or eligible to be a Maori authority, under section HF 2(3) (Who is eligible to be a Maori authority?); and

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- (b) a trustee who meets the requirements of section HF 2(3)(e)(i) to be a Maori authority.

*Sections **CB 6A** and CZ 39: cost and date of acquisition*

- (2) For the purposes of sections **CB 6A(1) to (5)** and CZ 39(2) to (6), if the consideration received by the transferor for the residential land is less than or equal to the total cost of the residential land to the transferor at the date of transfer—
  - (a) the transfer is treated as a disposal and acquisition for an amount that equals the total cost of the residential land to the transferor at the date of transfer; and
  - (b) the trustee of the test trust is treated as acquiring the residential land on the date that the property was acquired by the Crown.

***Subpart DH:** date of acquisition*

- (3) For the purposes of **subpart DH** (Interest incurred in relation to certain land), the trustee of the test trust is treated as acquiring the residential land or disallowed residential property on the date that the property was transferred by the Crown.

Defined in this Act: dispose, disallowed residential property, Maori authority, residential land, trust, trustee

**FC 9E Transfer of residential land or disallowed residential property between look-through company, or partnership, and members**

*What this section applies to*

- (1) This section applies to a transfer by a person (the **transferor**) of residential land or disallowed residential property to a recipient if—
  - (a) the recipient is—
    - (i) a look-through company of which the transferor is an owner; or
    - (ii) an owner of the transferor, which is a look-through company; or
    - (iii) a partnership of which the transferor is a member; or
    - (iv) a member of the transferor, which is a partnership; and
  - (b) the requirements of **subsection (4)** are met.

*Sections **CB 6A** and CZ 39: transfer at cost and date of acquisition for transferor*

- (2) For the purposes of sections **CB 6A(1) to (5)** and CZ 39(2) to (6), if the consideration received by the transferor for the residential land is less than or equal to the total cost of the residential land to the transferor at the date of transfer—

- (a) the transfer is treated as a disposal and acquisition for an amount that equals the total cost of the residential land to the transferor at the date of transfer; and
- (b) the recipient is treated as acquiring the residential land on the date that the property was acquired by the transferors.

**Subpart DH: date of acquisition**

- (3) For the purposes of **subpart DH** (Interest incurred in relation to certain land), the recipient is treated as acquiring the residential land or disallowed residential property on the date that the property was acquired by the transferor.

*Requirements for rollover of cost*

- (4) This section applies to a transfer of residential land or disallowed residential property if—
  - (a) the transfer is made by or to—
    - (i) the owners of the look-through company that receives or makes the transfer; or
    - (ii) the members of the partnership that receives or makes the transfer; and
  - (b) for each owner of the look-through company, the proportion held by the owner of the total shareholding in the look-through company is the same as—
    - (i) the proportion of the total ownership interests in the land that the owner holds, as a transferor or recipient in the transfer; and
    - (ii) the proportion of the total consideration for the transfer of the land that the owner provides as a recipient, or receives as a transferor, in the transfer; and
  - (c) for each member of the partnership, the proportion held by the member of the total partnership interests in the partnership is the same as—
    - (i) the proportion of the total ownership interests in the land that the member holds, as a transferor or recipient in the transfer; and
    - (ii) the proportion of the total consideration for the transfer of the land that the member provides as a recipient, or receives as a transferor, in the transfer.

Defined in this Act: close company, disallowed residential property, look-through company, partner, partnership, residential land

*New clauses 85B to 85D*

After *clause 85* (page 59, after line 3), insert:

**85B Section GB 3 amended (Arrangements for carrying forward loss balances: companies' ownership)**

In section GB 3(1)(c), replace “Continuity” with “Ownership continuity”.

**85C Section GB 52 amended (Arrangements involving residential land: companies' shares)**

In section GB 52(1), replace “CB 6A(1)(a) or (b)” with “**CB 6A(3)(1)(a) or (b)**”.

**85D New cross-heading and sections GB 53B and GB 53C inserted**

After section GB 53, insert:

*Interest incurred in relation to certain land*

**GB 53B Residential property percentage: increases or decreases in value**

*When this section applies*

- (1) This section applies when there is an increase or decrease in value that affects, or would affect the result of a calculation of a person's residential property percentage, defined in **section DH 6** (Key terms), and the increase or decrease is—
- (a) caused by an action or omission that has, or would have the purpose or effect of defeating the intent and application of **subpart DH** (Interest incurred in relation to certain land);
  - (b) produced by an arrangement that has a purpose or effect of defeating the intent and application of **subpart DH**.

*Effect of increase or decrease*

- (2) The effect of the increase or decrease in value on the calculation of a person's residential property percentage is ignored.

Defined in this Act: arrangement

**GB 53C On-lending at lower rate**

*When this section applies*

- (1) This section applies when, under an arrangement, a person borrows money and on-lends it to an associated person at a lower rate than that at which the person borrowed it, if—
- (a) the associated person, or a person associated with the associated person, owns disallowed residential property; and
  - (b) the arrangement has a purpose or effect, not being a merely incidental purpose or effect, of defeating the intent and appli-

cation of **subpart DH** (Interest incurred in relation to certain land).

*Lower rate used*

- (2) The amount of interest incurred by the person for the purposes of **subpart DH** is limited to and calculated using the lower rate. The higher rate is ignored.

Defined in this Act: arrangement, associated person, disallowed residential property, interest, money

*New clauses 89B to 89K*

After *clause 89* (page 60, after line 2), insert:

**89B Section IA 5 amended (Restrictions on companies' loss balances carried forward: continuity of ownership)**

- (1) In section IA 5(4), replace “IB 3 or IP 3 ” with “IB 3, IP 3, or **IP 3B**”.
- (2) **Subsection (1)** applies in relation to a breach of the requirements for continuity of ownership of section IA 5 if the breach occurs during the 2020–21 income year or a later income year.

**89C Section IB 3 amended (When tax loss components of companies carried forward despite ownership continuity breach)**

- (1) Replace section IB 3(3)(c) with:
- (c) the earlier income year is before the 2020–21 income year and the tax loss component could not be carried forward to the 2020–21 tax year in the absence of this subpart.
- (2) **Subsection (1)** applies in relation to a breach of the requirements for continuity of ownership of section IA 5 if the breach occurs during the 2020–21 income year or a later income year.

**89D Section ID 5 amended (Pre-consolidation losses on exit: part-year rule)**

- (1) In section ID 5(2), replace “section IP 3(3) (Continuity breach: tax loss components of companies carried forward)” with “section IP 3(3) or **IP 3B(3)** (which relate to the carrying forward of tax losses for companies)”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

**89E Section IP 1 amended (When this subpart applies)**

- (1) In section IP 1(1),—
- (a) words before the paragraphs, replace “either or both” with “1 or more of”:

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- (b) paragraph (b), replace “(a **continuity breach**).” with “(an **ownership continuity breach**):”:
- (c) after paragraph (b), insert:
  - (c) when a company to which section IB 3 applies breaches, during an income year, a requirement of section IB 3(2)(b) and (c) for the carrying forward of a tax loss component to the tax year that corresponds to the income year (a **business continuity breach**).
- (2) In the heading to section IP 1(2), replace “*IA, IC*,” with “*IA, IB, IC*.”
- (3) In section IP 1(2), replace “*IA, IC*,” with “*IA, IB, IC*.”
- (4) In section IP 1, list of defined terms, insert “company”, “income year”, and “tax loss component”.
- (5) **Subsections (1), (2), and (3)** apply for the 2020–21 and later income years.

**89F Section IP 3 amended (Continuity breach: tax loss components of companies carried forward)**

In the heading to section IP 3, replace “**Continuity**” with “**Ownership continuity**”.

**89G New section IP 3B inserted (Business continuity breach: tax loss components of companies carried forward)**

- (1) After section IP 3, insert:

**IP 3B Business continuity breach: tax loss components of companies carried forward**

*When this section applies*

- (1) This section applies for the purposes of section IA 4 (Using loss balances carried forward to tax year) if a tax loss component of a company would have been carried forward under section IB 3 (When tax loss components of companies carried forward despite ownership continuity breach) to a tax year but for a breach or breaches, during the income year that corresponds to the tax year, of either or both of the requirements of section IB 3(2)(b) and (c).

*Tax loss components for earlier income years*

- (2) Despite the breach or breaches, the tax loss component is carried forward to the tax year to the extent to which—
  - (a) the requirements of section IB 3(2)(b) and (c) would be met if the relevant period described in section IB 4 (Business continuity period) included only part of the income year of the company that corresponds to the tax year; and

- (b) the company has net income for part of the corresponding income year; and
- (c) the company provides the Commissioner with adequate financial statements under section IP 6 calculating the amount of the company’s net income for the relevant part of the corresponding income year.

*Limit on tax loss components carried forward*

- (3) The total tax loss components carried forward under **subsection (2)** must be no more than the amount calculated under **subsection (2)(b) and (c)**, although the amount may be increased if section IP 5 applies.

Defined in this Act: amount, Commissioner, company, corresponding income year, income year, net income, tax loss component, tax year

- (2) **Subsection (1)** applies for the 2020–21 and later income years.

**89H Section IP 4 amended (Breach in income year in which tax loss component arises)**

- (1) In section IP 4(2)(b), after “company A”, insert “, or continuity of company A’s business activities,”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

**89I Section IP 5 amended (Breach in tax year in which loss balance is grouped)**

- (1) In section IP 5(2)(b), after “company A”, insert “, or continuity of company A’s business activities,”.
- (2) **Subsection (1)** applies for the 2020–21 and later income years.

**89J Section IP 6 amended (Financial statements required)**

- (1) After section IP 6(1), insert:

*Financial statements required from company: **section IP 3B***

- (1B) For the purposes of this subpart, a company must provide the Commissioner with adequate financial statements under **section IP 3B(2)(c)** relating to the continuity period.

- (2) **Subsection (1)** applies for the 2020–21 and later income years.

**89K Section IZ 8 amended (Election to use net loss for 2019–20 or 2020–21 year as tax loss in preceding year)**

In section IZ 8(12), replace “Continuity” with “Ownership continuity”.

*New clauses 114B to 114E*

*After clause 114 (page 70, after line 30), insert:*

**114B Section RD 50 amended (Employer’s liability for attributed benefits)**

- (1) Replace section RD 50(5) with:

*Further options*

- (5) Instead of calculating FBT under subsections (2) and (4), an employer may choose to—
- (a) pay FBT at the rate of 63.93% on the taxable value of the attributed fringe benefits; or
  - (b) pay FBT,—
    - (i) for each employee whose all-inclusive pay, calculated using the formula in section RD 51(2), is \$129,681 or more, at the rate of 63.93% on the taxable value of the fringe benefits attributed to the employee; and
    - (ii) for each other employee, at the rate of 49.25% on the taxable value of the fringe benefits attributed to the employee.

- (2) **Subsection (1)** applies for the 2021–22 and later income years.

**114C Section RD 60 amended (Close company option)**

- (1) In section RD 60(3)(b), replace “the total pay of each employee” with “their FBT liability”.
- (2) **Subsection (1)** applies for the 2021–22 and later income years.

**114D Section RD 61 amended (Small business option)**

In section RD 61(3)(b), replace “the total pay of each employee” with “their FBT liability”.

**114E Section RD 63 amended (When employer stops employing staff)**

In section RD 63(3), words before the paragraphs, replace “section RD 50(2) or RD 53(3)” with “sections RD 50 and RD 53”.

*Clause 127*

After *clause 127(1)* (page 74, after line 26), insert:

- (1B) Insert, in appropriate alphabetical order:

**5-year test land** is defined in **section CB 6A(2)** (Disposal within 10 years: bright-line test for residential land)

- (1C) Insert, in appropriate alphabetical order:

**10-year test land** is defined in **section CB 6A(2)** (Disposal within 10 years: bright-line test for residential land)

- (1D) In the definition of **bright-line period**, paragraph (a), replace “CB 6A(1) to (5)” with “**CB 6A(3) to (7)**”.



- (1E) Insert, in appropriate alphabetical order:  
**code compliance certificate** is defined in **section DH 5** (Key terms)

Replace *clause 127(3)* (page 75, lines 1 to 9):

- (3) Replace the definition of **date of acquisition** with:  
**date of acquisition** is defined in section CZ 39 (Disposal within 5 years: bright-line test for residential land: acquisition on or after 29 March 2018) for the purposes of that section

After *clause 127(4)* (page 75, after line 14), insert:

- (4B) Insert, in appropriate alphabetical order:  
**disallowed residential property** is defined in **section DH 5** (Key terms)

After *clause 127(6)* (page 75, after line 24), insert:

- (6B) Insert, in appropriate alphabetical order:  
**employee accommodation**—
- (a) means property that a person provides to their employees or other workers for accommodation in connection with their employment or service:
  - (b) does not include accommodation provided to employees or other workers who are associated with the person, unless it is necessary for the person to provide the accommodation because of the nature or remoteness of a business carried on by them

After *clause 127(7)* (page 75, after line 25), insert:

- (7B) Insert, in appropriate alphabetical order:  
**excepted residential land** is defined in **section DH 5** (Key terms)

(7C) Repeal the definition of **excluded day**.

- (7D) Insert, in appropriate alphabetical order:  
**exempt Māori company** is defined in **section DH 5** (Key terms)

- (7E) Insert, in appropriate alphabetical order:  
**grandparented transitional loan** is defined in **section DH 5** (Key terms)

After *clause 127(10)* (page 76, after line 10), insert:

- (10B) Insert, in appropriate alphabetical order:  
**interposed residential property holder** is defined in **section DH 5** (Key terms)

(10C) Insert, in appropriate alphabetical order:

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**Māori excepted land—**

- (a) means—
  - (i) Māori customary land, Māori freehold land, or Crown land reserved for Māori, or land set aside as a Māori reservation, as the relevant terms are defined in Te Ture Whenua Māori Act 1993:
  - (ii) land, owned by a Maori authority or an entity eligible to become a Maori authority, if it is provided as a residence to a shareholder or beneficiary of that Maori authority or entity:
  - (iii) land, owned by a Maori authority or an entity eligible to become a Maori authority, if it is acquired as a result of a Treaty of Waitangi settlement, including by exercising a right of first refusal under such a settlement:
- (b) does not include land described in **paragraph (a)(iii)**, to the extent to which the land is held as lessee, and the lessee is not owned, directly or indirectly, by a Maori authority or an entity eligible to become a Maori authority

(10D) Insert, in appropriate alphabetical order:

**new build land** is defined in **section DH 5** (Key terms)

After *clause 127(16)* (page 76, after line 20), insert:

(16B) Insert, in appropriate alphabetical order:

**residential land company** is defined in **section DH 5** (Key terms)

(16C) Insert, in appropriate alphabetical order:

**residential land wholly-owned group member** is defined in **section DH 7** (Key terms)

(16D) Insert, in appropriate alphabetical order:

**residential property percentage** is defined in **section DH 6** (Residential property percentage)

After *clause 127(17)* (page 76, after line 23), insert

(17B) Insert, in appropriate alphabetical order:

**student accommodation—**

- (a) means a boarding establishment used for the accommodation of students enrolled at a registered school or premises described in section 5B of the Residential Tenancies Act 1986; and
- (b) includes premises described in section 5B of the Residential Tenancies Act 1986 even if they are used mainly for the

accommodation of students, and not exclusively for the  
accommodation of students

(17C) Insert, in appropriate alphabetical order:

**transitional residential interest** is defined in **section DH 7** (Transitional residential interest)

*New clause 131B*

After *clause 131* (page 78, after line 3), insert:

**131B New Schedule 15 inserted (Excepted residential land)**

After Schedule 14, insert the Schedule 15 set out in **schedule 1A** of this Act.

*New clause 143B*

After *clause 143* (page 83, after line 3), insert:

**143B Section 54C amended (Information in relation to payment of RLWT)**

- (1) In section 54C(1), words before the paragraphs, replace “within 10 years” with “within 10 years or 5 years, as the case may be.”
- (2) In section 54C(1)(b), replace “their date of acquisition of the land” with “the latest date on which they acquire the estate or interest in the residential land”.

*New schedule 1A*

Before *schedule 1* (page 98, before line 1), insert:

**Schedule 1A  
New Schedule 15 inserted**

**s 131B**

**Schedule 15  
Excepted residential land**

**s DH 5**

1. Business premises, except if the business premises—
  - (a) are used or available for use in a business of supplying accommodation; and
  - (b) are not a main home for the person or 1 or more other persons referred to in section CB 16A(2) (Main home exclusion for disposal within 10 years).

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2. Farmland, including any place configured as a residence or abode, whether or not it is used as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place.
3. A hospital, convalescent home, nursing home, or hospice.
4. A hotel, motel, inn, hostel, or camping ground.
5. A rest home or retirement village.
6. For the relevant person (**person A**), land that has been used predominantly for place configured as a residence or abode, whether or not it is used as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place, if that place was the main home for 1 or more of the following people:
  - (a) person A:
  - (b) a beneficiary of a trust, if person A is a trustee of the trust:
  - (c) a settlor of a trust, if person A is a trustee of the trust, and the settlor is one whose settlements for the trust are the greatest or greatest equal, by market value.
7. Student accommodation.
8. Employee accommodation.
9. Māori excepted land.

## **Explanatory note**

### **Tax measures relating to housing**

This Supplementary Order Paper (SOP) proposes to make changes to tax settings to improve affordability for first home buyers by dampening investor demand for existing properties.

The SOP proposes to:

- limit interest deductions for investors in residential property; and
- address issues arising out of the extension of the bright-line test from 5 years to 10 years.

Many landlords who invest in residential property do so expecting to earn a large capital gain when they sell their property. The current tax system allows landlords to deduct all interest expenditure relating to their residential rental properties, even if they do not pay any tax on the capital gain when they sell their property. Interest deductions related to residential rental properties will therefore be limited. To ensure there is no adverse impact on housing supply, property development and new builds will be exempt from the interest limitation rules.

In summary, the key features of the interest limitation proposal are:

- the rules would apply to interest incurred on or after 1 October 2021;

- for pre-existing loans relating to property acquired before 27 March 2021, interest denial would be phased at 25% per year over 4 years;
- loans drawn down on or after 27 March 2021 would be subject to full limitation from 1 October 2021, unless the property was acquired as a result of an offer made on or before 23 March 2021 that could not be withdrawn before 27 March 2021;
- property developers would continue deducting interest expenses as incurred;
- new build properties would be exempt from the interest limitation rules; and
- interest deductions would be allowed when a taxable sale of residential property is made.

### **Loss continuity**

The business continuity test (the **BCT**), which was enacted in the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021, allows a company to carry forward tax losses to future years if they have a change in ownership as long as there is no major change in the nature of the company’s business activities.

It was intended that tax losses incurred in an income year in which a breach of ownership continuity occurs could be considered for carry-forward under the BCT (to the extent to which they are incurred post-ownership continuity breach). However, the legislation technically does not allow this in all the circumstances in which it was intended.

For companies relying on the BCT that have a breach of business continuity, the legislation does not currently allow tax losses incurred in earlier years to be offset against a profit for the pre-breach part-year. The policy intent was that losses incurred in years preceding a breach of business continuity could be used in this way, like they can when ownership continuity is breached.

The SOP proposes amendments to align the legislation with the policy intent.

### **Fringe benefit tax: further alternate rate option**

An employer who provides a fringe benefit to an employee is liable to pay fringe benefit tax (**FBT**). The calculation of the employer’s FBT liability can be a complex exercise and there are different options they can choose. They may choose to pay FBT at a flat maximum rate, being 63.93% (49.25% prior to 1 April 2021), or at a rate reflecting the employee’s personal tax rate.

The flat rate or “single rate” option is a low compliance cost option for employers, but it may result in many employers having a significantly higher FBT liability despite having no or few employees with income over \$180,000 (being the income threshold above which the 39% personal tax rate applies). While a more accurate alternative is currently available to employers, it requires compliance cost intensive calculations to be carried out for each employee who receives a fringe benefit.

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The SOP proposes a new option for calculating FBT on fringe benefits provided to employees during the 2021–22 tax year and in future years. Under the proposed new option, employers would pay FBT at the rate of 49.25% for all employees with “all-inclusive pay” under \$129,681. FBT would be payable at the rate of 63.93% for employees with all-inclusive pay of \$129,681 or more. This would generally only be those employees earning over \$180,000 in (pre-tax) salary or wages or close to that threshold, assuming they do not receive significant fringe benefits.

**Departmental disclosure statement**

The Inland Revenue Department is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. The disclosure statement provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2021&no=64&>

**Regulatory impact statement**

The Inland Revenue Department produced a regulatory impact statement on 8 September 2021 to help inform the new policy decisions taken by the Government relating to the contents of this SOP.

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

- <https://taxpolicy.ird.govt.nz/publications>
- <https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments>