

Examined and certified:

Clerk of the House of Representatives

*In the name and on behalf of Her Majesty Queen Elizabeth
the Second I hereby assent to this Act this 21st day
of May 2007*

Governor-General.

Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007

Public Act 2007 No 19

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007.

2 Commencement

- (1) This Act comes into force on the date on which it receives the Royal assent, except as provided in this section.
- (2) Section 72 is treated as coming into force on 1 April 2007.
- (3) Sections 6, 39, 49(2), (3), (5), (6), (7), (9), and (11), 56, 58, 63 to 69, and 73 come into force on 1 July 2007.
- (4) Sections 4, 5, 7 to 26, 27, 28 to 38, 40 to 48, 49(8), (10), (12), (13), (14), (15), (16), and (17), 50(1)(d), 52 to 55, and 70 come into force on 1 October 2007.

Part 1

Amendments to Income Tax Act 2004

3 Income Tax Act 2004

This Part amends the Income Tax Act 2004.

4 Disposals of certain shares by portfolio investment entity after declaration of dividend

In section CB 4B(1)(a), “or New Zealand Superannuation Fund” is added after “portfolio investment entities”.

5 Section CP 1 replaced

Section CP 1 is replaced by the following:

“CP 1 Portfolio investor allocated income

The amount of portfolio investor allocated income of a person who is an investor in a portfolio tax rate entity is income of the person in the income year that includes the end of the entity’s income year for which the person is allocated the amount.

“Defined in this Act: income, income year, investor, portfolio investor allocated income, portfolio tax rate entity”.

6 New heading and section CX 1B

After section CX 1, the following is inserted:

“KiwiSaver and complying superannuation fund tax credits**“CX 1B KiwiSaver and complying superannuation fund tax credits**

A payment by the Commissioner of an amount of a tax credit under subpart KJ (KiwiSaver scheme and complying superannuation fund tax credits) is excluded income of the person deriving the payment.

“Defined in this Act: amount, Commissioner, excluded income”.

7 Proceeds from disposal of certain shares by portfolio investment entities

- (1) In the heading to section CX 44C, “**entities**” is replaced by “**entities or New Zealand Superannuation Fund**”.
- (2) In section CX 44C(1), in the words before paragraph (a), “or the New Zealand Superannuation Fund” is inserted after “a portfolio investment entity”.
- (3) In section CX 44C(2), “or the New Zealand Superannuation Fund” is inserted after “the portfolio investment entity”.

8 Portfolio investor allocated income and distributions of income by portfolio tax rate entities

- (1) In the heading to section CX 44D, “**portfolio tax rate entities**” is replaced by “**portfolio investment entities**”.
- (2) Section CX 44D(3)(a)(i) is replaced by the following:
 - “(i) is a natural person other than a trustee; and”.

- (3) Section CX 44D(3)(b) is replaced by the following:
- “(b) excluded income of the investor, if paragraph (a) does not apply, to the extent to which the amount of the distribution exceeds the total of the following:
 - “(i) the amount of the distribution that is fully imputed, as that term is defined in section NG 2(3) (Non-resident withholding tax imposed);
 - “(ii) the amount of the distribution that is fully dividend withholding payment credited, as that term is defined in section NG 2(4).”

9 New section CX 44E inserted

After section CX 44D, the following is inserted:

“CX 44E Rebates of certain fees by portfolio tax rate entities

A rebate of fees allocated to an investor as a member of a portfolio investor class by a portfolio tax rate entity is excluded income of the investor if the rebate is included in the calculation of the entity’s portfolio entity tax liability under section HL 20 (Portfolio entity tax liability and rebates of portfolio tax rate entity for period) for the investor, the portfolio investor class, and a portfolio calculation period.

“Defined in this Act: excluded income, investor, portfolio calculation period, portfolio entity tax liability, portfolio investor class, portfolio tax rate entity”.

10 Cost of revenue account property

- (1) In section DB 17(1), “a cost” is replaced by “the cost”.
- (2) In section DB 17(3)(b), “or New Zealand Superannuation Fund” is added after “portfolio investment entities”.

11 Section DB 43B replaced

Section DB 43B is replaced by the following:

“DB 43B Certain investors have deduction for portfolio investor allocated loss

“When this section applies

- “(1) This section applies to an investor in a portfolio investor class of a portfolio tax rate entity for a portfolio calculation period of the entity when—
 - “(a) the investor—

- “(i) is a zero-rated portfolio investor for the portfolio calculation period:
- “(ii) has all or part of a portfolio investor exit period included in the portfolio calculation period and the entity makes payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election); and
- “(b) the portfolio calculation period includes a portfolio allocation period for which the person is allocated an amount of portfolio investor allocated loss under sub-part HL (Portfolio investment entities).

“Deduction

- “(2) The investor has a deduction for an income year for the amount of portfolio investor allocated loss if—
 - “(a) the portfolio tax rate entity makes payments of tax under section HL 21 or HL 22 (Payments of tax by portfolio tax rate entity choosing to pay provisional tax) and the investor’s income year includes the end of the portfolio calculation period:
 - “(b) the portfolio tax rate entity makes payments of tax under section HL 23 (Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves) and the investor’s income year includes the end of the tax year in which the portfolio calculation period occurs.

“Defined in this Act: deduction, income year, investor, portfolio allocation period, portfolio calculation period, portfolio investor allocated loss, portfolio investor class, portfolio tax rate entity, tax, tax year, zero-rated portfolio entity”.

12 New section DB 43C inserted

After section DB 43B, the following is inserted:

“DB 43C Certain fees charged by portfolio tax rate entities to investors not allowed as deductions

“When this section applies

- “(1) This section applies to an investor in a portfolio investor class of a portfolio tax rate entity when—
 - “(a) the investor incurs fees in relation to the investor’s portfolio investor interest; and

“(b) the amount of the fees is included in the calculation of the entity’s portfolio entity tax liability under section HL 20 (Portfolio entity tax liability and rebates of portfolio tax rate entity for period) for the investor, the portfolio investor class, and a portfolio calculation period.

“*No deduction*

“(2) The investor is denied a deduction for the amount of the fees.

“*Link with subpart DA*

“(3) This section overrides the general permission.

“Defined in this Act: deduction, general permission, investor, portfolio calculation period, portfolio entity tax liability, portfolio investor class, portfolio investment entity”.

13 Meaning of trading stock

In section EB 2(3)(db), “or New Zealand Superannuation Fund” is added after “portfolio investment entities”.

14 Meaning of CFC

(1) After section EX 1(1), the following is inserted:

“*Exception*

“(1B) Even if 1 of the tests in subsection (1) is met, a foreign company is not a CFC if—

“(a) the foreign company is a foreign investment vehicle;
and

“(b) one of the New Zealand residents is—

“(i) a portfolio investment entity:

“(ii) an entity eligible to be a portfolio investment entity:

“(iii) a life insurance company.”

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

“(2) If any of the tests in subsection (1) is met at any time in a foreign company’s accounting period and the exception in subsection (1B) does not apply at that time, the company is treated as a CFC for the whole of the accounting period.”

15 Foreign investment vehicles

- (1) Section HL 5(1)(b) is replaced by the following:

“(b) is a company, a superannuation scheme, or the trustee of a trust that would be a unit trust if there were more than 1 subscriber, purchaser, or contributor participating as beneficiaries under the trust; and”.
- (2) In section HL 5(1)(c), “section HL 6(1)(a), (b), (d), (e), (f), (g), (h), or (i)” is replaced by “section HL 6(1)(a) to (i)”.
- (3) Section HL 5(1)(d) and (e) are replaced by the following:

“(d) has investors who, if they are resident in New Zealand, would meet the investor interest size requirements under section HL 9 if the entity were a portfolio investment entity; and

“(e) meets the further eligibility requirements relating to investments under section HL 10.”

16 Investor membership requirement

Section HL 6(1)(a) is replaced by the following:

- “(a) 20 persons, treating all interests held by persons associated under section OD 8(3) (Further definitions of associated persons) and included by subsection (4) as being held by 1 person:”.

17 Investor return adjustment requirement: portfolio tax rate entity

- (1) Section HL 7(2), in the words before paragraph (a), “the investor’s portfolio investor rate” is replaced by “the portfolio investor rate of an investor, as a member of a portfolio investor class,”.
- (2) In section HL 7(2)(a), “for the portfolio investor class” is inserted after “liability”.
- (3) In section HL 7(2)(b), “allocated to the investor as a member of the portfolio investor class” is inserted after “HL 27”.
- (4) Section HL 7(3)(a) and (b) are replaced by the following:

“(a) the investor’s portfolio investor interest in the portfolio investor class or another portfolio investor class—

“(i) before the end of the second month after the portfolio calculation period, if the entity has made an election under section HL 21; or

- “(ii) within 3 months of the end of the tax year, if the entity has made an election under section HL 22;
or
- “(iii) within 2 months of the end of the tax year, if the entity has made an election under section HL 23:
- “(b) the amount of each distribution to the investor as a member of the portfolio investor class or another portfolio investor class.”

18 Imputation credit distribution requirement: imputation credit account company

- (1) In the heading to section HL 8, “**imputation credit account company**” is replaced by “**portfolio listed company**”.
- (2) In section HL 8(1), “imputation credit account company” is replaced by “portfolio listed company”.
- (3) In section HL 8, the list of defined terms is replaced by “director, imputation credit, portfolio investment entity, portfolio investor class, portfolio listed company”.

19 Investor interest size requirement

Section HL 9(4)(c) is repealed.

20 Further eligibility requirements relating to investments

- (1) In section HL 10(2), in the words before paragraph (a), “allocated by an entity to a portfolio investor class” is replaced by “derived by the entity”.
- (2) In section HL 10(2)(b)(v), “income.” is replaced by “income:”, and the following is added:
 - “(vi) portfolio investor allocated income:
 - “(vii) distributions from superannuation funds.”
- (3) Section HL 10(3)(a) and (b) are replaced by the following:
 - “(a) the investment must—
 - “(i) carry voting interests in the company equal to or less than 20%, if the company is not a unit trust;
or
 - “(ii) have a market value equal to or less than 20% of the total market value of all shares in the company, if the company is a unit trust:

- “(b) the amount that is 10% of the total market value of all the entity’s investments must be greater than the total market value of all the entity’s investments in—
 - “(i) shares in a company that is not a unit trust that carry voting interests of more than 20% in the company:
 - “(ii) shares in a company that is a unit trust that have a market value of more than 20% of the total market value of all shares in the company.”
- (4) Section HL 10(4)(d) is repealed.
- (5) Section HL 10(5), other than the heading, is replaced by the following:
 - “(5) The class shareholding investment requirement is that, for each portfolio investor class and each investment referred to in subsection (3),—
 - “(a) the portfolio class fraction of the investment must—
 - “(i) correspond to voting interests in the company equal to or less than 20%, if the company is not a unit trust; or
 - “(ii) have a market value equal to or less than 20% of the total market value of all shares in the company, if the company is a unit trust:
 - “(b) the amount that is 10% of the total market value of all the class’s interests in the entity’s investments must be greater than the total market value of all the class’s interests in the entity’s investments in—
 - “(i) shares in a company that is not a unit trust that carry voting interests of more than 20% in the company:
 - “(ii) shares in a company that is a unit trust that have a market value of more than 20% of the total market value of all shares in the company.”
- (6) In section HL 10, in the list of defined terms, “portfolio investor allocated income”, “superannuation fund”, and “voting interest” are inserted.

21 New section HL 11B inserted

After section HL 11, the following is inserted:

“HL 11B Unlisted company may choose to become portfolio listed company

“Election

“(1) A company that is not listed on a recognised exchange in New Zealand may choose under section HL 11 to become a portfolio investment entity that is a portfolio listed company if the company—

“(a) would meet the requirements of paragraph (a) of the definition of **qualifying unit trust** if it were a unit trust; and

“(b) has resolved to become a company listed on a recognised exchange in New Zealand if it were to obtain the required consents; and

“(c) has applied to the Securities Commission for an exemption to disclose in a prospectus its intention to become a listed company; and

“(d) satisfies the Commissioner that the company would apply to become a listed company if it were to obtain the required consents.

“Election effective for 2 years

“(2) A company that makes an election under subsection (1) ceases to be a portfolio listed company from the last day of the period of 2 years from when the election is effective, if the company is not listed on a recognised exchange in New Zealand on that day.

“Defined in this Act: company, portfolio investment entity, portfolio listed company, qualifying unit trust, recognised exchange, unit trust, widely-held company”.

22 Becoming portfolio investment entity

(1) Section HL 12(1)(b), is replaced by the following:

“(b) the entity, if treated as becoming a portfolio investment entity when the election would be effective, would cease under section HL 4 to be eligible.”

(2) In section HL 12(3)(a)(i), “or New Zealand Superannuation Fund” is added after “portfolio investment entities”.

(3) After section HL 12(3), the following is added:

“New Zealand Superannuation Fund treated as disposing of, and reacquiring, property

- “(4) The New Zealand Superannuation Fund is treated for the purposes of subsection (3) as if it made an election that would be effective on 1 October 2007.”

23 Ceasing to be portfolio investment entity

In section HL 14(3)(a), “or New Zealand Superannuation Fund” is added after “portfolio investment entities”.

24 Portfolio allocation period and portfolio calculation period

- (1) In section HL 15(2)(a), “paragraph (b) or (c)” is replaced by “paragraph (ab), (b), or (c)”.
- (2) After section HL 15(2)(a), the following is inserted:

“(ab) a month, if the entity has a portfolio calculation period of a quarter and chooses the portfolio allocation period by giving a notice to the Commissioner—

 - “(i) before the tax year:
 - “(ii) when the entity chooses to become a portfolio tax rate entity; or”.

25 Treatment of income not allocated to investor, allocated but not vested in investor

- (1) The heading to section HL 16 is replaced by “**Treatment of income from interest if no investor entitled or investor has conditional entitlement**”.
- (2) The heading to section HL 16(2) is replaced by “*Treatment of income from interest if investor has conditional entitlement*”.
- (3) In section HL 16(2), the words before paragraph (a) are replaced by “A portfolio investment entity that is a superannuation fund may for the purposes of section HL 20 allocate a portfolio investor interest to an investor for a portfolio allocation period if—”.
- (4) In section HL 16(2)(b), “the interest will vest in the investor” is replaced by “the investor will have an unconditional entitlement to the interest”.
- (5) In section HL 16(2)(e)(ii), “3 years” is replaced by “5 years”.

26 Portfolio class taxable income and portfolio class taxable loss for portfolio allocation period

Section HL 19(7)(a)(i) is replaced by the following:

- “(i) the portfolio entity formation loss that is allocated to the portfolio allocation period and the portfolio investor class as allowed by section HL 28:”.

27 Portfolio entity tax liability and rebates of portfolio tax rate entity for period

- (1) In section HL 20(1)(a), “for the calculation period and each investor” is replaced by “for the calculation period and each portfolio investor class and each investor in the portfolio investor class”.
- (2) In section HL 20(2)(a), “for the calculation period and each investor” is replaced by “for the calculation period and each portfolio investor class and each investor in the portfolio investor class”.
- (3) In section HL 20(3),—
- (a) in the words before paragraph (a), “for an investor and calculation period” is replaced by “for an investor in a portfolio investor class and for a calculation period”:
- (b) in paragraph (b), “period; and” is replaced by “period.”:
- (c) paragraph (c) is repealed.
- (4) In section HL 20(4), the formula is replaced by the following:
- $$\frac{\text{investor fraction} \times (\text{income} - \text{loss}) \times \text{rate}}{\text{days in allocation period}} - (\text{fees} - \text{rebates}) \times \text{rate}.$$
- (5) In section HL 20(5), “subsections (6) to (10)” is replaced by “subsections (6) to (12)”.
- (6) In section HL 20(9)(b), “33%” is replaced by “30%”.
- (7) After section HL 20(10), the following is added:

“*Fees*

- “(11) **Fees** is the amount of fees for ongoing management and administration services paid from or charged to the account of the investor as a member of the portfolio investor class on the day in the portfolio allocation period.

“Rebates

- “(12) **Rebates** is the amount of rebates of fees paid or credited by the entity to the account of the investor as a member of the portfolio investor class on the day in the portfolio allocation period.”
- (8) Subsection (6) applies for the 2008–09 and later income years.

28 Payments of tax by portfolio tax rate entity making no election

Section HL 21(3)(a) is replaced by the following:

- “(a) of an amount of income tax equal to the part of the portfolio entity tax liability of the entity for the portfolio calculation period that does not relate to a payment by the entity under section HL 23B; and”.

29 Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves

In section HL 23(3)(a), “subsection (2)” is replaced by “subsection (2) or section HL 23B”.

30 New section HL 23B inserted

After section HL 23, the following is inserted:

“HL 23B Optional payments of tax by portfolio tax rate entities*“When this section applies*

- “(1) This section applies to a portfolio tax rate entity that makes payments of tax under section HL 21 or HL 23 if an investor reduces the investor’s portfolio investor interest in the entity.

“Optional payment during tax year of income tax relating to investor

- “(2) The entity may make a payment of income tax to the Commissioner representing an amount of the portfolio entity tax liability of the entity for the investor and the investor’s portfolio investor interest for the tax year.

“Time of optional payment

- “(3) A payment under this section must be made by the end of the month after—

- “(a) the portfolio calculation period in which the reduction of the investor’s portfolio investor interest occurs, if the entity makes payments of tax under section HL 21; or
- “(b) the month in which the reduction of the investor’s portfolio investor interest occurs, if the entity makes payments of tax under section HL 23.

“Defined in this Act: Commissioner, income tax, investor, portfolio entity tax liability, portfolio investor interest, portfolio tax rate entity, tax year”.

31 Portfolio investor allocated income and portfolio investor allocated loss

- (1) Section HL 24(2) and (3) are replaced by the following:

“Portfolio investor allocated income for period

- “(2) The person is treated as deriving from the portfolio tax rate entity in an income year an amount of **portfolio investor allocated income** equal to the greater of zero and the amount described in subsection (4) for portfolio allocation periods in the entity’s income year that ends in the person’s income year.

“Portfolio investor allocated loss for period

- “(3) The person is treated as having in relation to the portfolio tax rate entity in an income year an amount of **portfolio investor allocated loss** equal to,—

“(a) if the portfolio tax rate entity makes payments of tax under section HL 21 or HL 23, the greater of—

“(i) the amount by which zero is more than the amount described in subsection (4) for portfolio allocation periods in the entity’s income year that ends in the person’s income year:

“(ii) zero; or

“(b) if the portfolio tax rate entity makes payments of tax under section HL 22, zero.”

- (2) In section HL 24(4),—

(a) in the words before paragraph (a), “tax year” is replaced by “period containing portfolio allocation periods”:

(b) in paragraph (a), “tax year” is replaced by “period”.

- (3) In section HL 24(5), the formula is replaced by the following:

$$\frac{\text{investor fraction} \times (\text{income} - \text{loss})}{\text{days in allocation period}} - (\text{fees} - \text{rebates}).$$

- (4) In section HL 24(6),—
- (a) in paragraph (b), “**class income**” is replaced by “**income**”:
 - (b) in paragraph (c), “**class loss**” is replaced by “**loss**”:
 - (c) in paragraph (d), “allocation period.” is replaced by “allocation period:” and the following is added:
 - “(e) **fees** is the amount of fees for ongoing management and administration services incurred by the investor as a member of the portfolio investor class on the day in the portfolio allocation period:
 - “(f) **rebates** is the amount of rebates of fees paid by the entity and derived by the investor as a member of the portfolio investor class on the day in the portfolio allocation period.”

32 Treatment of portfolio investor allocated loss for other investors

- (1) In section HL 26(1), in the words before paragraph (a), “in a portfolio investor class” is inserted after “investor”.
- (2) In section HL 26(2), “as a member of a portfolio investor class” is inserted after “an investor”.
- (3) In section HL 26(2), “, or were to have chosen,” is inserted after “were liable”.

33 Credits received by portfolio tax rate entity or portfolio investor proxy

- (1) In section HL 27(3), “and a portfolio investor class” is inserted after “allocation period”.
- (2) In section HL 27(6), in the words before paragraph (a), “in a tax year” is omitted.
- (3) Section HL 27(6)(a) is replaced by the following:
 - “(a) subsections (7) and (8) apply—
 - “(i) to the income year in which the tax year ends, if the investor is a zero-rated portfolio investor; or
 - “(ii) to the income year corresponding to the tax year, if the entity makes payments of tax under section HL 21 and the portfolio allocation period includes part of a portfolio investor exit period for the investor.”

- (4) In section HL 27(7), in the words before paragraph (a), “corresponding to the income year” is inserted after “tax year”.
- (5) Section HL 27(7)(a) is replaced by the following:
- “(a) if the investor is not a portfolio tax rate entity and the credits are under subpart LC (Foreign tax), a credit against income tax payable by the investor of the amount given by subsection (8):”.
- (6) In section HL 27(7)(b), “if” is replaced by “if the investor is a portfolio tax rate entity or”.
- (7) Section HL 27(8) is replaced by the following:
- “Amount of credit for foreign tax — zero-rated portfolio investors, other than portfolio investment entities, and investors having portfolio investor exit period*
- “(8) An investor to whom subsection (7)(a) applies is treated as receiving for the tax year, for credits under subpart LC, a credit that is the lesser of—
- “(a) the amount of the allocated credits:
- “(b) the amount calculated by multiplying the amount of portfolio investor allocated income for the investor for the tax year by,—
- “(i) if the investor is not a zero-rated portfolio investor, the investor’s portfolio investor rate for the portfolio allocation period ending before the investor’s portfolio investor exit period; or
- “(ii) if the investor is a zero-rated portfolio investor, the basic rate of tax for the investor for the tax year under schedule 1 (Basic rate of income tax and specified superannuation contribution withholding tax).”
- (8) Section HL 27(10) is replaced by the following:
- “Other investor: credit for entity for foreign tax credits*
- “(10) The entity is treated as receiving for the tax year of the portfolio calculation period, for credits under subpart LC allocated to a portfolio investor class and an investor other than a zero-rated portfolio investor as a member of the portfolio investor class, a credit of an amount given by subsection

(10C) against income tax payable by the entity as described by subsection (10B).

“Use of credit

“(10B) The credit is against income tax payable by the entity for—

“(a) the portfolio calculation period and portfolio calculation periods—

“(i) later in the tax year, if the entity makes payments of tax under section HL 21; or

“(ii) earlier or later in the tax year, if the entity makes payments of tax under section HL 22 or HL 23; and

“(b) the investor as a member of the portfolio investor class or another portfolio investor class.

“Amount of credit

“(10C) The amount of the credit is the lesser of the following:

“(a) the total of—

“(i) the credits allocated to the portfolio calculation period and the investor as a member of the portfolio investor class; and

“(ii) the credits allocated to earlier portfolio calculation periods in the tax year and the investor that are not used by the entity as a credit against income tax payable for those portfolio calculation periods and for the investor as a member of the portfolio investor class or another portfolio investor class:

“(b) the amount of the entity’s portfolio entity tax liability—

“(i) for the investor as a member of the portfolio investor class or another portfolio investor class; and

“(ii) the portfolio calculation period and earlier portfolio calculation periods in the tax year; and

“(iii) not met by a credit allocated to an earlier portfolio calculation period.”

(9) In section HL 27(11), in the words before paragraph (a), “subsection (2)” is replaced by “subsection (3)”.

(10) In section HL 27(11)(a)(ii),—

(a) “in subsection (10)(b)” is replaced by “in subsection (10B)(b)”:

- (b) “by subsection (10)” is replaced by “by subsection (10B)”.

34 Portfolio entity formation loss

- (1) Section HL 28(3) is replaced by the following:

“Amount of portfolio entity formation loss available for allocation to portfolio allocation period

- “(3) The maximum amount of portfolio entity formation loss that a portfolio tax rate entity may allocate to a portfolio allocation period (the **relevant period**) is—

“(a) the amount of the portfolio entity formation loss that has not been allocated to an earlier portfolio allocation period, if, at the time the entity becomes a portfolio investment entity, the amount of portfolio entity formation loss is less than 5% of the total market value of the entity’s portfolio entity investments; or

“(b) the amount calculated using the formula in subsection (4), if paragraph (a) does not apply.

“Formula

- “(4) The maximum amount of portfolio entity formation loss under subsection (3)(b) that a portfolio tax rate entity may allocate to a relevant period is calculated using the formula—

$$\text{initial loss} \times \frac{\text{days}}{1095} - \text{loss used.}$$

“Definition of items in formula

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

“(a) **initial loss** is the amount of portfolio entity formation loss at the time the entity becomes a portfolio investment entity:

“(b) **days** is—

“(i) the number of days in the period beginning with the day on which the entity becomes a portfolio investment entity and ending on the last day of the relevant period, if that number is less than or equal to 1095; or

“(ii) 1095, if paragraph (a) does not apply:

“(c) **loss used** is the amount of portfolio entity formation loss allocated to portfolio allocation periods before the relevant period.

“Amount of portfolio entity formation loss available for allocation to portfolio investor class and portfolio allocation period

“(6) The maximum amount of portfolio entity formation loss that a portfolio tax rate entity may allocate to a portfolio investor class for a relevant period is the lesser of the following amounts:

“(a) the maximum amount of portfolio entity formation loss given for the relevant period by subsection (3):

“(b) the amount calculated using the formula—

$$\text{class net income} - \frac{\text{credits}}{\text{rate.}}$$

“Definition of items in formula

“(7) In the formula in subsection (6)(b),—

“(a) **class net income** is the amount of portfolio class net income for the portfolio investor class for the portfolio allocation period:

“(b) **credits** is the total amount allocated to the portfolio investor class and the relevant period of—

“(i) imputation credits:

“(ii) Maori authority credits:

“(iii) credits for resident withholding tax:

“(iv) dividend withholding payment credits:

“(c) **rate** is the rate of tax for companies given by schedule 1, part A, clause 5 (Basic rates of income tax and specified superannuation contribution withholding tax).”

(2) In section HL 28, in the list of defined terms, “dividend withholding payment credit”, “imputation credit”, “Maori authority credit”, “portfolio entity investment”, “portfolio investor class”, and “resident withholding tax” are inserted.

35 Treatment of portfolio class taxable loss and portfolio class land loss for tax year

In section HL 30(1), “of an entity making payments of tax under section HL 21 or HL 23” is inserted after “investor class”.

36 Portfolio investor proxies

In section HL 31(3)(e)(ii), “provide.” is replaced by “provide; and”, and the following is added:

“(f) provide to each portfolio investment entity in which the portfolio investor proxy holds portfolio investor interests for investors in a portfolio investor class, information concerning the investors and the portfolio investor interests that may be relevant to whether the portfolio investment entity meets the eligibility requirements for the entity.”

37 Companies included in group of companies

In section IG 1(2), in the words before paragraph (a), “portfolio investment entity” is replaced by “portfolio tax rate entity”.

38 Rebate for portfolio tax rate entity relating to certain investors

- (1) In section KI 1(1), in the words before paragraph (a), “as a member of a portfolio investor class” is inserted after “an investor”.
- (2) Section KI 1(3) is repealed.

39 New subpart KJ

After subpart KH, the following is inserted:

“Subpart KJ—KiwiSaver scheme and complying superannuation fund tax credits

“KJ 1 Tax credits relating to KiwiSaver scheme and complying superannuation fund members

“*Tax credit*

- “(1) The Commissioner must pay, in accordance with section KJ 4, the amount of a tax credit calculated under section KJ 3 for a member credit year to a person’s fund provider, to the extent

to which the person meets the requirements in section KJ 2 in the member credit year.

“Rules

“(2) Section KJ 5 provides some rules for the tax credit.

“Defined in this Act: amount, Commissioner, complying superannuation fund, KiwiSaver scheme, member credit year

“KJ 2 Person’s requirements

For the purposes of section KJ 1(1), the requirements are that the person—

- “(a) is a member of a complying superannuation fund or a KiwiSaver scheme for which there are member credit contributions; and
- “(b) is 18 years or older; and
- “(c) is not entitled to withdraw an amount from a fund or scheme under schedule 1, clause 4(3) of the KiwiSaver Act 2006 or a rule the same as that clause; and
- “(d) has their principal place of residence in New Zealand, unless they meet the requirement in paragraph (e); and
- “(e) if paragraph (d) does not apply, is an employee of the State services within the meaning of the State Sector Act 1988 who is serving outside New Zealand, or is a person who works overseas as a volunteer or for token payment and—
 - “(i) the person works for a charitable organisation named in regulations made under the Student Loan Scheme Act 1992; and
 - “(ii) the work meets 1 or more of the requirements in sections 38AEA(a)(i) to (iii) of the Student Loan Scheme Act 1992; and
- “(f) where they meet the requirements of paragraph (e), they give the relevant fund provider evidence, in writing, of why and for what period in a member credit year they meet the relevant requirements of paragraph (e).

“Defined in this Act: amount, complying superannuation fund, fund provider, KiwiSaver scheme, member credit contributions, member credit year

“KJ 3 Tax credit amount*“Amount*

- “(1) For the member credit year, the amount of the tax credit is equal to the number of dollars calculated using the following formula:

$$\frac{\text{base amount} \times \text{included days}}{365.}$$

“Definition of items in formula

- “(2) In the formula,—

“(a) **base amount** is the lesser of—

“(i) the total amount of a person’s member credit contributions to all of the person’s complying superannuation funds and KiwiSaver schemes for the member credit year:

“(ii) \$1,042.86:

“(b) **included days** are the number of days in the member credit year on which the person meets the requirements in section KJ 2.

“Defined in this Act: amount, complying superannuation fund, KiwiSaver scheme, member credit contributions, member credit year

“KJ 4 Payment*“No deduction: direct credit*

- “(1) The Commissioner must pay the amount of tax credit under section KJ 1 to a person’s fund provider who complies with section 68C of the Tax Administration Act 1994—

“(a) without deduction or set-off for any other amount that the person or the person’s fund provider may be obliged to pay the Commissioner; and

“(b) by direct credit; and

“(c) in accordance with subsection (2).

“Pro-rata payment

- “(2) Where the person has more than 1 fund provider to whom the Commissioner must pay an amount of tax credit for a member credit year, the Commissioner must pay a fund provider the proportion of the tax credit that the person’s member credit

contributions for the year bears to the total amount of a person's member credit contributions to all of the person's complying superannuation funds and KiwiSaver schemes for the year.

“Defined in this Act: amount, Commissioner, complying superannuation fund, KiwiSaver scheme, member credit contributions, member credit year

“KJ 5 Rules

“*Credit: amount*

- “(1) The fund provider is treated as being credited with the tax credit for the purposes of recovering any amount of tax credit paid in excess of that properly payable under section KJ 1.

“*Treatment as contribution*

- “(2) Despite subsection (1), the amount of the tax credit paid to a person's fund provider is treated, for the purposes of this Act and the KiwiSaver Act 2006, as a Crown contribution for the person, and the amount is subject to the relevant KiwiSaver scheme rules and complying fund rules.

“*Treatment of tax credit*

- “(3) The fund provider must credit the amount of the tax credit on a pro rata basis across the investment products to which the person has subscribed or has been allocated as a member of the relevant KiwiSaver scheme or complying superannuation fund.

“*Vesting of tax credit*

- “(4) The tax credit must vest in the person immediately after it is paid to the fund provider, despite any provision to the contrary.

“*Override of other rules: tax credit paid in excess*

- “(5) Despite the relevant KiwiSaver scheme rules or complying fund rules, the relevant fund provider may remove an amount from a person's account for the purposes of paying to the Commissioner an amount of tax credit paid in excess of that properly payable under this subpart.

“Claw-back: permanent emigration

- “(6) When a person for whom amounts of tax credit have been paid makes an application for, or otherwise wants, after their permanent emigration, a withdrawal or transfer from their KiwiSaver scheme or complying superannuation fund under schedule 1, clause 14 of the KiwiSaver Act 2006 or a rule the same as that clause,—
- “(a) the relevant fund provider must pay to the Commissioner the lesser of—
- “(i) the amounts of the tax credit that have been paid for the person:
 - “(ii) the amount of employee’s superannuation accumulation for the person, for a complying superannuation fund:
 - “(iii) the amount of the **member’s accumulation** as defined in the KiwiSaver Act 2006 for the person, for a KiwiSaver scheme; and
- “(b) the payment described in paragraph (a) must be made to the Commissioner as soon as practicable.

“Recovery of claw-back

- “(7) A fund provider has an amount of tax credit paid in excess of that properly payable to the extent to which they fail to comply with subsection (6)(b).

“Defined in this Act: amount, complying fund rules, complying superannuation fund, employee’s superannuation accumulation, fund provider, KiwiSaver scheme”.

40 Credit for investor for tax paid by entity if portfolio investor allocated income not excluded income

Section LD 10(2) is replaced by the following:

- “(2) The taxpayer is entitled to a credit of tax against the taxpayer’s income tax liability for the tax year equal to the amount of income tax paid by the portfolio tax rate entity in relation to the portfolio investor allocated income referred to in subsection (1).”

41 New section LD 10B inserted

After section LD 10, the following is inserted:

“LD 10B Credit for zero-rated portfolio investor for tax paid by entity in relation to portfolio investor allocated income

- “(1) This section applies for a taxpayer and a tax year if the taxpayer is a zero-rated portfolio investor and has for the tax year portfolio investor allocated income from a portfolio tax rate entity that pays income tax in relation to the portfolio investor allocated income.
- “(2) The taxpayer is entitled to a credit of tax against the taxpayer’s income tax liability for the tax year equal to the amount of income tax paid by the portfolio tax rate entity in relation to the portfolio investor allocated income referred to in subsection (1).”

42 Credit for investor for payment under section HL 21(5) by entity for portfolio investor exit period

Section LD 11(2) is replaced by the following:

- “(2) The taxpayer is entitled to a credit of tax against the taxpayer’s income tax liability for the tax year equal to the amount of the payment by the entity under section HL 21(5).”

43 Methods for calculating provisional tax liability

Section MB 4(4) is replaced by the following:

“Relationship of other methods with standard method, and modification of standard method

- “(4) Subsections (5) to (7) override subsection (3). Section MZ 10 (Calculating provisional tax instalments: section MB 4) modifies subsection (3).”

44 GST ratio method

The following is added to section MB 7:

“Relationship with other provisions

- “(9) Section MZ 11 (Calculating provisional tax instalments: sections MB 7 and MB 10) modifies this section.”

45 Calculating amount of instalment under standard and estimation methods

In section MB 9(3),—

- (a) in paragraph (a)(i), “5%” is replaced by “5% (section MZ 12 (Calculating provisional tax instalments: section MB 9) modifies this subparagraph)”;
- (b) in paragraph (a)(ii), “10%” is replaced by “10% (section MZ 12 modifies this subparagraph)”.

46 Calculating amount of instalment using GST ratio

The following is added to section MB 10:

“Relationship with other provisions

- “(4) Section MZ 11 (Calculating provisional tax instalments: sections MB 7 and MB 10) modifies this section.”

47 New sections MZ 10 to MZ 12

- (1) The following is added to subpart MZ:

“MZ 10 Calculating provisional tax instalments: section MB 4

- “(1) This section applies, for a person’s 2008–09 and 2009–10 income years, when the person is a new tax rate person for that year.

- “(2) For the purposes of the standard method, and for the purpose of a provisional taxpayer calculating the amount of provisional tax under section MB 4(3),—

“(a) for the 2008–09 income year,—

“(i) 105% is treated as 95% in section MB 4(3)(a):

“(ii) 110% is treated as 100% in section MB 4(3)(b):

“(b) for the 2009–10 income year, 110% is treated as 100% in section MB 4(3)(b).

“MZ 11 Calculating provisional tax instalments: sections MB 7 and MB 10

- “(1) This section applies, for a person’s 2008–09 and 2009–10 income years when—

“(a) the person is a new tax rate person for that year; and

“(b) in section MB 7, residual income tax amounts or income tax assessment amounts (the **income tax amounts**) are required for determining base amounts or otherwise for calculating the GST ratio; and

“(c) the income tax amounts are for the 2007–08 or earlier income years.

“(2) For the purposes of a provisional taxpayer calculating the amount of an instalment under section MB 10, the income tax amounts in section MB 7 are treated as reduced by multiplying them by 0.9.

“MZ 12 Calculating provisional tax instalments: section MB 9

“(1) This section applies, for a person’s 2008–09 and 2009–10 income years, when the person is a new tax rate person for that year.

“(2) For the purposes of a provisional taxpayer calculating the amount of an instalment under section MB 9(2),—

“(a) for the 2008–09 income year,—

“(i) section MB 9(3)(a)(i) is treated as requiring a 5% reduction of the taxpayer’s residual income tax for the preceding tax year, not a 5% uplift:

“(ii) section MB 9(3)(a)(ii) is treated as requiring the taxpayer’s residual income tax for the tax year immediately before the preceding tax year, not a 10% uplift:

“(b) for the 2009–10 income year, section MB 9(3)(a)(ii) is treated as requiring the taxpayer’s residual income tax for the tax year immediately before the preceding tax year, not a 10% uplift.”

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

48 Application of NRWT rules

(1) In section NG 1(2)(a), “and dividends from portfolio listed companies” is omitted.

(2) In section NG 1(2)(f), “section CX 44D(3)” is replaced by “section CX 44D(2) or (3)”.

49 Definitions

(1) This section amends section OB 1.

(2) In the definition of **allowable rebates**, paragraph (a), “of money)” is replaced by “of money) and excluding tax credits allowed under subpart KJ (KiwiSaver scheme and complying superannuation fund tax credits)”.

- (3) In the definition of **complying fund rules**, in paragraph (a), “7, and 9” is replaced by “7, 9, and 17”.
- (4) In the definition of **complying fund rules**, after paragraph (c), the following is inserted:
- “(cb) require that an employee’s superannuation accumulation is used to fund benefits that are calculated only by reference to the amount of that accumulation; and”.
- (5) In the definition of **complying fund rules**, after paragraph (e), the following is inserted:
- “(eb) require that, for a transfer to another complying superannuation fund in accordance with paragraph (d), the new fund provider is given notice of—
- “(i) any written evidence provided to the old fund provider by the member under section KJ 2(f) (Person’s requirements); and
- “(ii) the amounts of tax credits received by the old fund provider under subpart KJ (KiwiSaver scheme and complying superannuation fund tax credits); and
- “(iii) any information held by the old fund provider that would be relevant to the new fund provider making a claim under section 68C of the Tax Administration Act 1994, including information as to the periods for which claims have already been made; and”.
- (6) In the definition of **employee’s superannuation accumulation**,
- (a) in paragraph (a), “completely” is omitted; and
- (b) after paragraph (a), the following is inserted:
- “(ab) the amount of tax credit under section KJ 1 (Tax credits relating to KiwiSaver scheme and complying superannuation fund members) that is treated as a Crown contribution for an employee under section KJ 5(2) (Rules):”.
- (7) After the definition of **fully employed person**, the following is inserted:
- “**fund provider** means, for a person, and for a complying superannuation fund or a KiwiSaver scheme of which they are a member, the trustees of the fund or scheme”.

- (8) In the definition of **income tax liability**, paragraph (a) is replaced by the following:
- “(a) means, for a person,—
 - “(i) an income tax liability for the person and a tax year calculated under subpart BC (Calculating and satisfying income tax liabilities), if subparagraph (ii) does not apply; or
 - “(ii) income tax for the person and a tax year calculated under subpart HL (Portfolio investment entities), if the person is a portfolio tax rate entity; and”.
- (9) After the definition of **member**, the following is inserted:
- “**member credit contributions** means, for a person, and for their complying superannuation funds and KiwiSaver schemes, superannuation contributions to the person’s funds and schemes to the extent to which the contributions are subject to KiwiSaver scheme rules or complying fund rules, but excluding:
- “(a) specified superannuation contributions; and
 - “(b) contributions withdrawn under a mortgage diversion facility provided for in regulations made under section 229 of the KiwiSaver Act 2006
- “**member credit year** means a year beginning on 1 July and ending on 30 June”.
- (10) After the definition of **new start grant**, the following is inserted:
- “**new tax rate person**—
- “(a) means a person who uses a 30% basic rate that applies for the 2008–09 and later income years:
 - “(b) includes a portfolio tax rate entity”.
- (11) After the definition of **permit-specific asset**, the following is inserted:
- “**permitted withdrawal** means a withdrawal that is permitted under—
- “(a) the KiwiSaver scheme rules, as defined in section 4 of the KiwiSaver Act 2006:
 - “(b) the complying fund rules, as defined in this Act”.
- (12) In the definition of **portfolio investor exit period**,—

- (a) in the words before paragraph (a), “portfolio investor class of a” is inserted after “investor in a”:
 - (b) in paragraph (a)(ii), “and the portfolio investor class and any other portfolio investor classes” is inserted before “would”:
 - (c) in paragraph (a)(ii), “for the portfolio investor class and any other portfolio investor classes” is inserted after “portfolio investor interest”:
 - (d) in paragraph (a)(ii), “period; or” is replaced by “period; and” and the following is added:
 - “(iii) the amount of the portfolio entity tax liability referred to in subparagraph (ii) is not paid under section HL 23B (Optional payments of tax by portfolio tax rate entities); or”:
 - (e) in paragraph (b)(i), “the entity” is replaced by “the portfolio investor class”:
 - (f) paragraph (b)(ii) is replaced by the following:
 - “(i) ending on a day in the tax year on which the entity’s portfolio entity tax liability under section HL 20 for the investor and the portfolio investor class and any other portfolio investor classes for the period equals or exceeds the value of the investor’s portfolio investor interest for the portfolio investor class and any other portfolio investor classes”.
- (13) In the definition of **portfolio investor rate**,—
- (a) in paragraph (a), “33%” is replaced by “30%”:
 - (b) paragraphs (b)(i) and (ii) are replaced by the following:
 - “(i) before the end of the portfolio calculation period, if the entity makes payments of tax under section HL 21 (Payments of tax by portfolio tax rate entity making no election); and
 - “(ii) before the end of the tax year in which the portfolio calculation period occurs, if the entity makes payments of tax under section HL 23 (Payments of tax by portfolio tax rate entity choosing to make payments when investor leaves); and
 - “(iii) before the entity has calculated the portfolio investor allocated income or portfolio investor allocated loss for the investor and the period; and

- “(iv) by a notice satisfying section 28B of the Tax Administration Act 1994; or”.
- (14) In the definition of **portfolio land company**, paragraph (b), in the words before subparagraph (i), “at the beginning of the tax year” is replaced by “on 80% of the days in the corresponding income year on which the company has property with a market value equal to or more than \$100,000”.
- (15) The definition of **portfolio listed company** is replaced by the following:
- “**portfolio listed company** means a company that—
- “(a) is listed on a recognised exchange in New Zealand or meets the requirements of section HL 11B (Unlisted company may choose to become portfolio listed company); and
 - “(b) has become a portfolio investment entity under section HL 12 (Becoming portfolio investment entity); and
 - “(c) has not ceased to be a portfolio listed company under section HL 11B; and
 - “(d) has not ceased to be a portfolio investment entity under section HL 14 (Ceasing to be portfolio investment entity)”.
- (16) In the definition of **portfolio tax rate entity**, paragraph (d) is replaced by the following:
- “(d) is not a portfolio defined benefit fund”.
- (17) In the definition of **prescribed investor rate**,—
- (a) in paragraph (a), “33%” is replaced by “30%”;
 - (b) in paragraph (b)(ii), “allocated income” is replaced by “allocated income after subtraction of portfolio investor allocated loss”;
 - (c) paragraph (c)(ii) is replaced by the following:
 - “(ii) is a portfolio investment entity other than a person to whom paragraph (a)(ii) applies:”;
 - (d) paragraph (c)(iv) is replaced by the following:
 - “(iv) is a superannuation fund other than a person to whom paragraph (a)(ii) applies:”.
- (18) After the definition of **widely-held company**, the following is inserted:
- “**widely-held GIF** means a group investment fund that meets the requirements of—

- “(a) the investor membership requirements in section HL 6(1) (Investor membership requirement), treating the group investment fund as having 1 portfolio investor class comprised of all investors in the fund:
 - “(b) one or more of paragraphs (a) and (c) to (e) of the definition of **qualifying unit trust**, treating the group investment fund as a unit trust
- “**widely-held superannuation fund** means a superannuation fund that meets the requirements of—
- “(a) the investor membership requirements in section HL 6(1) (Investor membership requirement), treating the superannuation fund as having 1 portfolio investor class comprised of all investors in the fund:
 - “(b) one or more of paragraphs (a) and (c) to (e) of the definition of **qualifying unit trust**, treating the superannuation fund as a unit trust”.
- (19) Subsection (4) applies, for a superannuation fund and an employee’s superannuation accumulation, on and after 1 July 2007, unless the fund is approved by the Government Actuary as a complying superannuation fund before 17 May 2007.
- (20) If subsection (4) does not apply, because of subsection (19), the law that would apply if subsection (4) did not exist applies instead.
- (21) Subsections (13)(a) and (17)(a) apply,—
- (a) for a portfolio tax rate entity to which section HL 21 or HL 23 of the Income Tax Act 2004 applies, on and after 1 April 2008:
 - (b) for a portfolio tax rate entity to which section HL 22 of the Income Tax Act 2004 applies, for the 2008–09 and later income years.
- (22) Subsection (18) applies for the 2008–09 and later income years.

50 Schedule 1—Basic rates of income tax and specified superannuation contribution withholding tax

- (1) In schedule 1, part A,—
- (a) in clause 1, “33 cents” is replaced by “30 cents”:
 - (b) in clause 4, “clause 7 or 8” is replaced by “clause 7, 8, or 8B”:
 - (c) in clause 5, “33 cents” is replaced by “30 cents”:

- (d) clause 6 is repealed:
 - (e) in clause 7, “33 cents” is replaced by “30 cents”:
 - (f) after clause 8, the following is inserted:
“**8B** To the extent to which taxable income of a trustee is not included in the provisions of clause 7 or 8, the basic rate of income tax is 30 cents for every dollar of that taxable income, if the income is of a trustee of—
 - (a) an approved unit trust to which the Income Tax Act (Exempt Unit Trusts) Order 1990 applies:
 - (b) a widely-held superannuation fund:
 - (c) a widely-held GIF.”
- (2) Subsections (1)(a), (b), (c), (e), and (f) apply for the 2008–09 and later income years.

Part 2

Amendments to other Acts and Regulations

Tax Administration Act 1994

51 Tax Administration Act 1994

Sections 52 to 56 amend the Tax Administration Act 1994.

52 Portfolio tax rate entity to give statement to investors and request information

- (1) Section 31B(1)(a) and (b) are replaced by “for each tax year”.
- (2) Section 31B(2) is replaced by the following:
“(2) A portfolio tax rate entity must give to an investor in the entity who has a portfolio investor exit period a notice giving information that the Commissioner considers relevant for each portfolio calculation period in which the portfolio exit period falls, if the portfolio calculation period is more than a day.”
- (3) After section 31B(2), the following is inserted:
“(2B) A notice required by subsection (2) must be given by the end of the month following the quarter in which the portfolio investor exit period ends.”
- (4) In section 31B(3)(a), “income year” is replaced by “tax year”.
- (5) In section 31B(3)(b), “income year” is replaced by “tax year”.

- (6) In section 31B(4), “income year” is replaced by “tax year”.

53 Annual returns of income not required

After section 33A(1)(b)(x), the following is added:

“(xi) portfolio investor allocated income that is not excluded income; and”.

54 Commissioner may approve furnishing of return information by electronic means

In section 36(3)(ba), “or annual reconciliation statement under section 57B” is inserted after “employer monthly schedule”.

55 Portfolio tax rate entities and portfolio investor proxies to make returns, file annual reconciliation statement

- (1) Section 57B(4)(a)(ii) is repealed.
- (2) Section 57B(6)(a) and (b) are replaced by the following:
- “(a) by 30 June of the calendar year in which the tax year ends, if—
- “(i) the person has a corresponding income year that does not end after the end of the tax year; and
- “(ii) the person is a portfolio tax rate entity or portfolio investor proxy at the end of that corresponding income year; or
- “(b) by the end of the second month following the month in which the corresponding income year for the portfolio tax rate entity ends, if—
- “(i) the portfolio tax rate entity has a corresponding income year that ends after the end of the tax year; and
- “(ii) the person is a portfolio tax rate entity or portfolio investor proxy at the end of that corresponding income year; or
- “(c) by the end of the second month following the month in which the entity ceases to be a portfolio tax rate entity or portfolio investor proxy, if the person ceases to be a portfolio tax rate entity or portfolio investor proxy in the corresponding year.”

56 New section 68C

After section 68B, the following is inserted:

“68C Tax credit relating to KiwiSaver and complying superannuation fund members: member credit form

- “(1) This section applies to a person’s fund provider.
- “(2) The fund provider must claim a tax credit under section KJ 1 of the Income Tax Act 2004 for the person for a member credit year, if the fund provider—
- “(a) is the person’s fund provider on—
 - “(i) 30 June of the member credit year; or
 - “(ii) the day in the member credit year that is before the person ceases to be a member of the fund provider’s fund or scheme due to permitted withdrawals other than transfers; and
 - “(b) is reasonably satisfied of the number of days in the member credit year on which the person meets the requirements of section KJ 2(d) of that Act; and
 - “(c) has no knowledge that the person does not meet the requirements of section KJ 2(a) to (c), and (e) and (f) of that Act for any part of the member credit year.
- “(3) The fund provider must claim a tax credit for the person for the member credit year by furnishing to the Commissioner a member credit claim in relation to the person, in the form prescribed by the Commissioner. The member credit claim must—
- “(a) contain the person’s name, address, and tax file number, the amount of the person’s member credit contributions for the member credit year, and any other information that the Commissioner may require; and
 - “(b) be furnished on a date determined by the Commissioner.
- “(4) The fund provider may claim a tax credit under section KJ 1 for the person for an earlier member credit year, if, for the year, the provider meets the requirements of subsection (2)(b) and (c), and is satisfied that a tax credit has not previously been claimed for the same period as their claim. The claim must be in the form prescribed under subsection (3), and contain the information required in subsection (3)(a).”

*KiwiSaver Act 2006***57 KiwiSaver Act 2006**

Sections 58 to 69 amend the KiwiSaver Act 2006.

58 Interpretation

In section 4(1), the definition of **Crown contribution** is replaced by the following:

“**Crown contribution** means—

- “(a) the contribution made by the Crown under section 226;
- “(b) the amount of tax credit under section KJ 1 of the Income Tax Act 2004 that is treated as a Crown contribution for a member under section KJ 5(2) of that Act”.

59 Application

In section 6(1)(a), “who is serving outside New Zealand; and” is replaced by “who is—”, and the following is added:

- “(i) serving outside New Zealand; and
- “(ii) employed on New Zealand terms and conditions; and
- “(iii) serving in a jurisdiction where offers of KiwiSaver scheme membership are lawful; and”.

60 Other situations when automatic enrolment rules do not apply

In section 14(1)(c), “PAYE rules.” is replaced by “PAYE rules:” and the following is added:

- “(d) if amounts are withheld for an employee under the PAYE rules solely because section OE 1(5) of the Income Tax Act 2004 applies to them.”

61 Eligibility to be exempt employer

In section 25(3), the definition of **permanent employees** is replaced by the following:

“**permanent employees** means employees—

- “(a) who are not employed in temporary employment (as described in section 12); and
- “(b) to whom the automatic enrolment rules would apply, but for the application of this section.”

62 Employer may choose scheme for employees

Section 46(3) is replaced by the following:

- “(3) In this section, **permanent employees** means employees—
- “(a) who are not employed in temporary employment (as described in section 12); and
 - “(b) to whom the automatic enrolment rules would apply, but for the application of section 14.”

63 Notification of transfers and requirement to transfer funds and information

In section 56(3)(c)(iii), “in force.” is replaced by “in force; and”, and the following is added:

- “(iv) of any written evidence provided to a provider of the old scheme by the member under section KJ 2(f) of the Income Tax Act 2004; and
- “(v) of the amounts of tax credits received by a provider of the old scheme under subpart KJ of that Act; and
- “(vi) of any information held by a provider of the old scheme that would be relevant to a provider of the new scheme making a claim under section 68C of the Tax Administration Act 1994, including information as to the periods for which claims have already been made.”

64 Contributions from employer may be paid via Commissioner

- (1) In the heading to section 93, “**may**” is replaced with “**may only**”.
- (2) In section 93(1), “may” is replaced with “may only”.

65 Employer must give notice that employer contributions to be paid via Commissioner

Section 94 is repealed.

66 New section 128A

After section 128, the following is inserted:

“128A Terms relating to members’ tax credits implied into trust deed

- “(1) The terms relevant to the tax credits described in section KJ 1 of the Income Tax Act 2004 are implied into a trust deed that establishes—
- “(a) a KiwiSaver scheme in relation to the KiwiSaver scheme;
 - “(b) a complying superannuation fund in relation to the complying superannuation fund.
- “(2) The law relating to the tax credits—
- “(a) applies despite anything to the contrary in a trust deed of a scheme or fund; and
 - “(b) is enforceable by a trustee, and by a member, of the scheme or fund.”

67 Application of Securities Act 1978

In section 209(2), “under this Act” is replaced by “in respect of KiwiSaver schemes and complying superannuation funds”.

68 New section 233

After section 232, the following is added:

“233 Transitional provision: pre-1 July 2007 securities law documentation

- “(1) This section applies to the following documents:
- “(a) a prospectus that is registered under the Securities Act 1978 before 1 July 2007;
 - “(b) an investment statement under the Securities Act 1978 that is dated before 1 July 2007.
- “(2) A document to which this section applies is as valid and effectual as it would have been if the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 had not been enacted and as if the relevant KiwiSaver scheme or complying superannuation fund had not changed as a result.”

69 Schedule 1—KiwiSaver scheme rules

- (1) In clause 12(2), “calculating the amount of the Crown contribution” is replaced by “calculating the amount of the Crown contribution, and disregarding any part of that contribution

arising from a tax credit under section KJ 1 of the Income Tax Act 2004”.

- (2) In clause 14(1) “accumulation” is replaced by “accumulation less the amount of the Crown contribution arising from a tax credit under section KJ 1 of the Income Tax Act 2004 (disregarding any positive or negative returns for the purposes of calculating that amount of Crown contribution)”.
- (3) The following is added to schedule 1:

“17 Crown contributions: tax credits

Despite rules 4 to 14, the amount of the Crown contribution arising from a tax credit under section KJ 1 of the Income Tax Act 2004 (disregarding any positive or negative returns for the purposes of calculating that amount of Crown contribution) may not be withdrawn—

- “(a) before the member gives the **fund provider** (as that term is defined in the Income Tax Act 2004) a statutory declaration stating the periods for which the person has their principal place of residence in New Zealand; and
- “(b) to the extent to which the **fund provider** has notice that their claim for a tax credit is wrong, because the number of **included days** under section KJ 3 of the Income Tax Act 2004 is wrong.”

Companies Act 1993

70 Dividends

In section 53(2) of the Companies Act 1993, “by section HL 8” is replaced by “as a result of section HL 7”.

Superannuation Schemes Act 1989

71 Dealing with applications for complying superannuation funds

- (1) Sections 35(1)(a) and (b) of the Superannuation Schemes Act 1989 are replaced by the following:
- “(a) the registered scheme and any relevant participation agreement evidence rules that subject the following to complying fund rules:
- “(i) relevant contributions:
- “(ii) returns on relevant contributions:

“(iii) relevant benefits; and”.

- (2) Subsection (1) applies, for a superannuation fund and an employee’s superannuation accumulation, on and after 1 July 2007, unless the fund is approved by the Government Actuary as a complying superannuation fund before 17 May 2007.
- (3) If subsection (1) does not apply, because of subsection (2), the law that would apply if subsection (1) did not exist applies instead.

Taxation (Savings Investment and Miscellaneous Provisions) Act 2006

72 New section 97B inserted

After section 97 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006, the following is inserted:

“97B Application under section HL 11

Despite section 2(22), a person may make an application under section HL 11 as if section 97 came into force on 1 April 2007.”

Goods and Services Tax (Grants and Subsidies) Order 1992

73 Schedule—Non-taxable grants and subsidies

The following is added to the schedule of the Goods and Services Tax (Grants and Subsidies) Order 1992:

- “5** The Commissioner of Inland Revenue crediting, transferring, refunding, dealing with, or otherwise paying, a tax credit under the Income Tax Act 2004 or the Tax Administration Act 1994, if that tax credit is one to which entitlement arises under subpart KJ of the Income Tax Act 2004.”

Legislative history

17 May 2007

Introduction, first reading, second reading, committee of the whole House, third reading (Bill 118–1)
