

Taxation (Annual Rates, Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Bill

Government Bill

Explanatory note

General policy statement

This portion of the explanatory note provides a detailed analysis of the amendments proposed in the bill.

Some of the amendments in the bill have retrospective application, to ensure that the intended policy of the provisions, as amended, applies to all taxpayers intended to be subject to the policy.

Clauses with retrospective effect are identified in the explanatory notes.

Unless the contrary is indicated, the amendments come into force on the date that the bill receives the Royal assent.

Part 1

Annual Rates of Income Tax for 2002–03

The proposed amendment confirms the annual income tax rates that will apply for the 2002–03 income year. The annual income tax rates to be confirmed will be the same as the rates that applied for the 2001–02 income year.

Part 2 Amendments to Income Tax Act 1994

Taxation of Maori organisations

The bill contains a number of amendments arising out of proposals in the Government discussion document, *Taxation of Maori organisations*. The changes being proposed include:

Modernising the specific rules for Maori authorities

The bill introduces legislation to completely replace the current specific rules that apply to Maori authorities. The current rules date back to the 1950s and are now outdated, involve unnecessary restrictions, complex processes and high compliance costs. In some cases, they can lead to double taxation of Maori authority income.

The proposed changes recognise that there is a continued need for specific rules for Maori organisations that manage Maori assets held in communal ownership. Such entities are set apart from other entities like ordinary companies and trusts by factors such as the difficulty of selling Maori freehold land and other tribal assets, the legal restrictions placed on the use of these assets, and the unique way in which such assets must be owned and administered.

The key features of the proposed rules are:

- A new definition of *Maori authority* lists those entities that are eligible to apply the new rules. The list is confined to those entities that are subject to the restrictions and constraints described above.
- Maori authorities can elect out of the Maori authority rules to apply the general tax rules if they meet the requirements of those rules. Maori authorities may also re-enter the Maori authorities rules, but they will be subject to the tax consequences for entities in winding up situations.
- The income of a Maori authority will be subject to an income tax rate of 19.5% as this rate reflects the tax rate that applies to the majority of individuals that derive benefits from Maori authorities.
- The new rules incorporate a credit attribution system, similar to the company imputation model. Under this system, the tax paid by or on behalf of Maori authorities will give rise to

Maori authority tax credits that can be attached to distributions of tax-paid income to their members. Recipient members can then use these tax credits to satisfy their own tax liabilities. Any unused tax credits will be refundable to the recipient member.

- Maori authorities will also have the ability to distribute non-taxable amounts, such as treaty settlement assets, tax-free to their members. This measure is intended to preserve the current tax treatment of distributions of non-taxable income sources.

The credit attribution system is both fair and accurate, as it avoids the potential for double taxation of Maori authority income and provides the opportunity to align the tax paid at the authority level with the marginal tax rates of individual members of an authority.

Tax rules applying to the Maori Trustee

The specific agent tax rules that apply to the Maori Trustee will be removed so that the new Maori authority rules will apply in all situations, even when the Maori Trustee acts as agent in the collection and distribution of rents, royalties and interest. This measure will standardise the tax rules that apply to the Maori Trustee.

Extending the donations deduction for Maori authorities

The current deduction available to Maori authorities for donations to Maori associations is being extended to include gifts of money to organisations with “approved donee status”. The deduction will continue to be limited to 5% of the net income of the authority, consistent with the deduction limitation that will apply to ordinary companies. This measure will recognise the greater range of community benefits that are assisted by Maori authority funding.

Relaxing the public benefit requirement for “charitable” tax exemption

The public benefit requirement will be relaxed so that an organisation that meets the “charitable purposes” requirement will not be automatically excluded from the “charitable” income tax exemption simply because its members are connected by blood ties. In determining whether an entity meets the public benefit requirement, other factors must be considered, such as the nature of the entity, the

activities it undertakes, the potential beneficiary class, the relationship between the beneficiaries and the number of potential beneficiaries.

The proposed amendment will provide greater certainty about how the requirements of “charitable” income tax exemption applies to Maori and non-Maori organisations whose beneficiaries are defined by reference to blood ties.

“Charitable” tax exemption for marae

Marae situated on Maori reservations (under the Maori Land Act 1993) that solely apply their funds to the administration and maintenance of the physical structures of the marae will qualify for charitable tax exemption. This change will not preclude marae or marae based organisations from seeking the general charitable income tax exemption if they meet the common law requirements of a charity (as amended by the public benefit proposal).

This measure will provide comparable treatment to marae that applies to other bodies that carry out similar functions, such as churches and public halls.

Application date

The proposed amendments will apply from the beginning of the 2004–05 income year. The amendment relating to relaxing the public benefit requirement will apply from the beginning of the 2003–04 income year.

Tax pooling

The bill introduces rules allowing taxpayers to pool their provisional tax payments with those of other taxpayers, with the result that underpayments may be offset by overpayments within the same pool. This proposal follows release of the discussion document *More time for business* in May 2001.

Taxpayers have to pay their income tax liability on their terminal tax date. Often the amount actually due is uncertain, with the amount paid during the year reflecting the taxpayer’s best judgement of the law on a large number of technical issues. If the taxpayer’s judgement of their liability is incorrect, say as a result of an amended

assessment, and they have actually overpaid or underpaid tax, use of money interest is applied.

Currently, there is no administrative mechanism allowing taxpayers to reflect this uncertainty in their payment of tax. This issue is much more pointed in the area of provisional tax, where taxpayers are trying to estimate how much income they will earn in a year, with use of money interest applying if they are wrong. This is exacerbated by the fact that many taxpayers consider that the rate of interest the Government pays on tax overpayments to be too low and the rate it charges on underpayments too high.

Tax pooling will allow businesses to pool tax payments, offsetting tax underpayments by overpayments within the same pool, thereby reducing use of money interest exposure. The pooling arrangement will be made through a commercial intermediary, who will arrange for participating taxpayers to be charged or compensated for the offset—participating taxpayers will pay/receive interest on their tax underpayments or tax overpayments.

Taxpayers will also be able to approach the intermediary at any time and ‘borrow’ from the pool, requesting that tax payments be made on their behalf to the department, wherever there are funds available at a relevant tax payment due date. The intermediary will, in turn, provide the department with a schedule setting out the participating taxpayers and the amounts to be transferred to their respective tax payment accounts on the relevant date.

Pooling will provide advantages to taxpayers and commercial intermediaries, without affecting the tax base. This is because the intermediaries will manage the underpayments and overpayments to Inland Revenue on the participating taxpayers’ behalf. This means intermediaries ought to be able to pay a higher rate of interest to taxpayers who have overpaid their tax into the pool, and charge a lower rate of interest to those who have underestimated their tax and have therefore borrowed from the pool, than the rates of use of money interest paid by the department. The commercial intermediaries make their money by arbitraging the interest rate differential between the department’s rates and their own (lower) financing costs. The department will continue to receive the correct amount of tax.

PAYE intermediaries

The bill includes amendments to implement an initiative outlined in *More time for business* that will allow employers to voluntarily transfer the bulk of their PAYE obligations to accredited intermediaries. The proposal was well received in submissions on the discussion document and has been developed further through consultation with submitters.

The initiative is intended to reduce barriers that prevent some employers from using intermediaries to calculate and pay PAYE. It is also intended to support employers who currently use intermediaries to help meet PAYE obligations. The initiative was developed in response to employers' concerns about the time they spend keeping up to date with the PAYE rules and calculating and paying deductions. The risk of penalties and interest being imposed should they make a mistake also caused unnecessary stress and worry.

Under the initiative, employers who choose to participate can transfer the bulk of their PAYE obligations by engaging an accredited intermediary to be statutorily responsible for calculating and paying the PAYE deductions to Inland Revenue, meeting all return filing requirements and paying employees. Those intermediaries will also be responsible for keeping PAYE records. Currently, the statutory obligations of the PAYE rules and therefore the underlying risks associated with not meeting those requirements lie with employers. Under the new system, employers who provide basic payroll information and gross wages to the accredited intermediary within timeframes specified by intermediaries will not be responsible for penalties and interest imposed because of non-compliance with the rules.

A key feature of the proposal is that the employer would pay the gross wages to the intermediary, who would then have responsibility for paying both the employees and Inland Revenue. As well as adequate systems for calculating PAYE, minimum technological standards would need to be met by intermediaries to ensure the correct electronic interface for returns and payments with Inland Revenue's systems. Although collected electronically from intermediaries, the type of information collected by Inland Revenue through returns would not change, nor would the frequency of its collection.

Accreditation of intermediaries is necessary to ensure the integrity and security of the PAYE calculation and payment process. It should also mitigate the risk of penalties and interest for intermediaries. Gross wages paid by employers to intermediaries would need to be deposited into a trust account.

This initiative will apply from 1 April 2003.

Charities

The bill contains a number of changes in relation to charities that were first canvassed in the government discussion document *Tax and charities* released for public comment in June 2001.

The proposed amendments will:

- increase the maximum donations rebate for individual donors. The limit had not been reviewed since 1990 so it has been adjusted in line with inflation since then, taking the maximum rebate from \$500 to \$630; and
- simplify the thresholds limiting the deductibility of donations made by companies, so that there is only one threshold, a maximum of 5% of net income; and
- remove the prohibition on deductions for donations made by close companies, where those companies are listed on a recognised exchange; and
- clarify that to qualify for the income tax exemption, an entity's charitable purposes have to be carried out in each year the tax exemption is claimed. This change removes any argument that an entity only has to demonstrate a charitable purpose when it is established.

The changes to the rebate and deduction provisions are to take effect from the commencement of the 2002–03 income year. The change to verify that charitable purposes have to be on-going to qualify for the income tax exemption is to take effect from the commencement of the 2003–04 income year.

Depreciation and amalgamation

Amendments are proposed to the depreciation and amalgamation provisions to clarify the interaction of these rules.

Sections EG 17 and FE 5 will be amended to make it clear that the rules in section FE 5 for determining the cost of assets acquired in non-qualifying amalgamations are subject to the anti-avoidance rule in section EG 17. That rule limits the cost base of a depreciable asset acquired from an associate to the original cost of the asset to the associate. The amendment ensures that the anti-avoidance rule cannot be circumvented by using an amalgamation instead of a sale to transfer an asset between associates.

A new section FE 6A will be introduced to allow a depreciation deduction to be claimed in the year of disposal if the disposal occurs on a qualifying amalgamation. This corrects a defect which means that the disposing company cannot claim depreciation for the period of the tax year up to the amalgamation. The amendment will be retrospective to the enactment of the amalgamation provisions, legitimising claims which have already been made. However, retrospection will not apply where companies have already filed returns where the depreciation has not been claimed.

Donee organisations

The following are to be added to those organisations specifically listed in section KC 5(1) of the Income Tax Act 1994:

- Open Home Foundation International Trust
- Register of Engineers for Disaster Relief New Zealand
- The Hillary Himalayan Foundation
- Together for Uganda.

Donations to these organisations will qualify, within prescribed limits, for the donations rebate if made by an individual taxpayer, or for a deduction if made by a company that is not a closely held company, or a closely held company that is listed on a recognised stock exchange.

The Save the Children Fund, which already has donee status, will be amended to Save the Children New Zealand (and its branches) to reflect the name and structure under which this organisation now operates.

The amendments will apply from the 2002–03 income year.

Reimbursement of interest expenses

This minor remedial amendment removes any doubt that when a person reimburses another party for interest expenses incurred as part of film production expenditure, that person can deduct the reimbursement as if it were film production expenditure they had incurred themselves. An amendment to the Act last year to verify that the timing of interest deductions is determined by the accrual rules had thrown doubt on how the reimbursement would be treated.

This amendment is backdated to apply from the 1997–98 income year, to coincide with the application of the rule verifying that the timing of interest deductions is determined by the accrual rules.

International tax—remedial amendments

Conduit tax relief

An amendment is proposed to clarify that the non-resident shareholding percentage used when receiving conduit relief is the same percentage used in the conduit excess interest allocation rules. Currently different percentages may arise, which is an unintended result.

The amendment will apply from the 1998–99 income year except where a taxpayer has filed an income tax return based on the current law before the date of the bill's introduction, when it will apply from the next income year or 2002–03 whichever is earlier.

Branch equivalent tax accounts

Amendments are proposed to clarify that only one branch equivalent tax account credit can be created when a company uses losses to reduce its income tax liability and also pays income tax. It is possible, currently, to create credits when income tax is paid as well as when losses are used that exceed the attributed foreign income multiplied by the company tax rate. Such a result was unintended.

The amendments will apply from 1 April 1995 except if a taxpayer has filed an income tax return based on the current law before the date of the bill's introduction, when it will apply from the next income year.

Residual income tax

An amendment is proposed to clarify that residual income tax excludes debit transfers from a branch equivalent tax account of a

company. Residual income tax is the income tax liability less refundable rebates and tax credits. It is appropriate, therefore, that debit transfers from a branch equivalent tax account of a company which become non-refundable tax credits for income tax purposes should be excluded from residual income tax.

The amendment will apply from the 1995–96 income year except where a taxpayer has filed an income tax return based on the current law before the date of the bill’s introduction, when it will apply from the next income year or 2002–03 whichever is earlier.

Rationalisation of terminal tax payment date provisions

Amendments are proposed to rationalise the terminal tax payment date provisions for income tax. There are currently three separate provisions in the Act covering the payment dates for terminal tax. These three provisions can be reduced to a single provision. The amendments will apply from the 2002–03 income year.

Part 3

Amendments to Tax Administration Act 1994

Compliance, standards and penalties

In August 2001 the Government released a discussion document, *Taxpayer compliance, standards and penalties: a review*, which represented the first stage of the post-implementation review of the compliance and penalties legislation. The changes proposed in that document and included in this bill are:

Good behaviour

The shortfall penalties for lack of reasonable care and unacceptable interpretation will be reduced to 10% if within the previous 4 years the taxpayer has not been liable for the same shortfall penalty imposed as the result of an audit. If the taxpayer subsequently breaches the same standard the subsequent shortfall penalty will be imposed at the rate of 20%. This amendment is aimed at taking taxpayers’ past history of good behaviour into account when imposing shortfall penalties for these types of breaches.

Penalties for unacceptable tax positions

The name of the *unacceptable interpretation* penalty will be changed to *unacceptable tax position* and the penalty will apply to tax positions that fail to meet the standard of being as likely as not to be correct regardless of whether the taxpayer has interpreted the legislation or not. This amendment ensures that the legislation reflects the original intent. The amendment also proposes that the thresholds at which this penalty is imposed be increased.

Onus of proof

The proposed amendment will provide that if a taxpayer proves on the balance of probabilities that an amount assessed is wrong by a specific amount, the court must reduce the assessment by that specific amount.

Tax in dispute

The proposed amendment will remove the requirement to pay 50% of the amount of tax being disputed. Since the introduction of two-way use of money interest rules, the justification for requiring payment is significantly reduced. The Commissioner will be given the power to require full payment of the amount being disputed if he considers that there is a risk to the revenue.

Information gathering powers

In December 1998 the Committee of Experts on Tax Compliance reported to the then Government. In its report, the Committee of Experts identified a number of deficiencies in relation to the Commissioner's information gathering powers. Recommendations made by the Committee of Experts were included in the discussion document.

The proposed amendments to section 16 will give the Commissioner the power to remove documents for copying, clarify that third parties can be required to give reasonable assistance in an investigation and who may be given authority to enter a taxpayer's premises. The proposed amendments to section 17 will allow the Commissioner to requisition records held by offshore entities controlled by a New Zealand resident and give Inland Revenue the discretion to require documents to be sent to a specified Inland Revenue office.

The proposed amendments will apply on and after the date the bill receives the Royal assent.

Capping the penalty for lack of reasonable care

The proposed amendment will impose a monetary cap on the shortfall penalty for lack of reasonable care. The cap will be set at \$50,000 per tax position and will apply to those shortfalls identified through voluntary disclosure or Inland Revenue audit within two months of the relevant return being filed.

Promoter penalties

The bill introduces a new civil penalty which will be imposed on promoters of arrangements, in cases where investment in the arrangement leads to the investor having a shortfall penalty for an abusive tax position imposed. Taxpayers who have less than \$50,000 invested in the arrangement and advice that the arrangement does not involve an abusive tax position will have the shortfall penalty imposed at 20%, rather than the normal 100%.

Inclusion of material facts in private or product rulings

An amendment is proposed to the definition of *arrangement* in section 3 to clarify that the Commissioner may include in private and product rulings facts that the Commissioner considers material or relevant, as background or context, to any of the matters on which the private or product ruling is sought. These facts will form part of the *arrangement* specified in the ruling.

Part 4

Amendments to Other Acts

Amendments to Goods and Services Tax Act 1985

Telecommunications services

Amendments will clarify the GST treatment of supplies of telecommunications services by inserting a new place of supply rule, zero-rating provisions and definitions to ensure that telecommunications services consumed outside New Zealand are not subject to GST. These changes will not significantly alter existing policy but rather will provide clarification for the industry.

International passenger cruises

An amendment to section 11A(1) will clarify that the domestic leg of an international passenger cruise is zero-rated. This will remove current uncertainties as to whether apportionment is required between the domestic and international legs.

Amendment to Income Tax Act 1976

Mirroring the amendment proposed in the Income Tax Act 1994, a new section 191WF is introduced to allow a depreciation deduction to be claimed in the year property is disposed of, for the period up to the amalgamation, if the disposal occurs on a qualifying amalgamation. The amendment applies on and after 1 July 1994 if a company has filed a return of income claiming the depreciation deduction before the date of the bill's introduction.

Amendments to Student Loan Scheme Act 1992, Child Support Act 1991 and Injury, Prevention, Rehabilitation and Compensation Act 2001

Amendments are proposed to these Acts to ensure that non-tax deductions, such as student loan repayment deductions and child support, can be deducted by PAYE intermediaries. Consequential amendments to remove references to repealed sections are also made as a result of the new terminal tax date provision.

Clause by clause analysis

Part 1

Annual Rates of Income Tax for 2002–03

Clause 3 confirms that income tax imposed by *section BB 1* of the Income Tax Act 1994 must be paid at the basic rates specified in Schedule 1 of the Act.

Part 2

Amendments to Income Tax Act 1994

Clause 5 amends *section CB 1* by omitting a reference to repealed section HK 14.

Clause 6 amends *section CB 4* to require charities to carry out charitable purposes each year in which they claim a tax exemption.

Clause 7 replaces *section DI 2* to allow Maori authorities a deduction for gifts of money to donee organisations. The deduction is limited to 5% of the Maori organisation's net income.

Clause 8 replaces *section DJ 4* to allow companies to deduct donations to donee organisations. The deduction is limited to 5% of the company's net income. If the company is a close company, the company's shares must be listed on a recognised exchange to qualify for the deduction.

Clause 9 amends *section EG 17* to clarify that the provision applies when depreciable property is transferred between associates on a non-qualifying amalgamation.

Clauses 10 and 11 consequentially amend *sections EH 3 and EH 28* by omitting references to replaced sections.

Clause 12 amends *section EI 14* to reflect a change in terminology.

Clause 13 amends *section EO 4* to clarify that the reimbursement of interest expense qualifies as film production expenditure.

Clause 14 amends *section FE 5* to clarify the interaction of the section with *section EG 17*.

Clause 15 inserts a new *section FE 6A* to provide that a company that transfers depreciable property on a qualifying amalgamation may claim a depreciation deduction in the year of amalgamation for the period up to the amalgamation.

Clause 16 amends *section FH 3* to ensure that the non-resident percentage used is the same one used when receiving conduit tax relief.

Clause 17 repeals *section GC 14(2)*. This provision is redundant as a result of the new Maori authority rules.

Clause 18 inserts a new *section GC 27A*, an anti-avoidance provision, to apply to arrangements to obtain a tax advantage in relation to Maori authority credits.

Clause 19 amends *section HE 2* by omitting a reference to repealed *section HK 14*.

Clause 20 consequentially amends *section HG 12* as a result of the new terminal tax date provision.

Clauses 21 and 23 repeal *sections HH 3(6) and HH 4(8)* respectively. These provisions are redundant as a result of the new Maori authority rules.

Clause 22 amends *section HH 3E* to remove a reference to the Maori trustee as this person is now included in the proposed *Maori authority* definition.

Clause 24 replaces *Part HI* which defines what is a distribution from a Maori authority and how such distribution is treated, that is taxable or non-taxable income. This Part also states that if a Maori authority applies other provisions of this Act and then wishes to apply this Part, for income tax purposes, it must be treated as being in the course of winding up.

Clause 25 repeals *section HK 14*. This provision is redundant as the Maori Trustee in its role as an agent will be covered by the new Maori authority rules.

Clauses 26 to 29 amend *sections IE 2, IE 3, IE 4* and *II 1* by omitting redundant references.

Clause 30 amends *section KC 1* to include taxable distributions from a Maori authority in the calculation of a low income rebate.

Clause 31 amends *section KC 5* by omitting a reference to repealed *section HK 14* and increasing the threshold for a rebate for gifts of money from \$500 to \$630. *Section KC 5* is further amended by replacing *The Save the Children Fund* with *Save the Children New Zealand (and its branches)*. *Section KC 5* is also amended by adding *Open Home Foundation International Trust, Register of Engineers for Disaster Relief New Zealand, The Hillary Himalayan Foundation* and *Together for Uganda* to the list of charitable donee organisations.

Clause 32 amends *section KE 1* by omitting a reference to repealed *section HK 14*.

Clause 33 amends *section LB 1* to determine the amount of Maori authority credits that can be credited.

Clause 34 amends *section LB 2* to allow a Maori authority with excess imputation credits to convert the credits into income tax losses to be carried forward and offset against net income in future years.

Clause 35 amends *section LD 1* to include a PAYE intermediary as an employer as far as tax deductions being credited against tax assessed.

Clause 36 inserts a new *section LD 3A* to treat Maori authority credits as refundable credits. A member must include a Maori authority credit in gross income and offset the credit against income tax payable. A member can get a refund of any unused balance of a Maori authority credit.

Clause 37 inserts a new *Part MBA* providing for the pooling of provisional tax payments through an intermediary.

Clause 38 replaces *Part MC* and outlines the dates for payment of terminal tax.

Clause 39 inserts a new *section MD 2B* to place limits on refunds of tax for a Maori authority that maintains a Maori authority credit account. These limits are based on those applying to an imputation credit account company.

Clause 40 amends *section ME 4* to credit a company's imputation credit account with Maori authority credits attached to distributions made to the company by a Maori authority. A credit also arises for the credit balance of a Maori authority credit account if the Maori authority is a company and elects to stop maintaining that account.

Clause 41 amends *section ME 5* to debit a company's imputation credit account with the credit balance of the account if the company establishes a Maori authority credit account.

Clauses 42 and *43* amend *sections MF 4* and *MF 8* to ensure that the branch equivalent tax account credit is limited to the tax liability on the attributed foreign income when a company pays income tax as well as uses losses to offset its net income.

Clause 44 inserts a new *Part MK* outlining how a Maori authority is to set up, maintain, disburse credits and debits, and wind up a Maori authority credit account. It further allows for the correction by the Commissioner of credits and debits.

Clause 45 inserts a new *Part NBA* introducing PAYE intermediaries to assume PAYE obligations and support those employers who wish to join this initiative.

Clause 46 amends the heading to *Part NC* to reflect a change in terminology.

Clauses 47 to *53* amend *sections NC 2, NC 5, NC 8, NC 12A, NC 14*, the cross heading before *NC 15* and *section NC 15* by adding PAYE intermediaries as if they were an employer.

Clauses 54 and 55 repeal the cross heading before *section NC 17* and *section NC 17*.

Clause 56 amends *section NC 18* by including PAYE intermediaries as if they were an employer.

Clause 57 amends *section NC 19* by omitting redundant terminology.

Clause 58 amends *section NC 20* by including PAYE intermediaries as if they were an employer.

Clause 59 amends *section NF 1* to include distributions from a Maori authority in the income year from which resident withholding tax must be deducted if the distribution is not fully credited.

Clause 60 amends *section NF 2* to provide a formula for calculating resident withholding tax to be deducted from a distribution by a Maori authority.

Clause 61 amends *section NF 2B* to exclude a Maori authority that is a company who elects to apply *Part HI* from the requirement to notify an interest payer if they receive resident withholding income.

Clause 62 amends *section NF 4* to provide for the time that resident withholding tax deductions must be paid to the Commissioner.

Clause 63 amends *section NF 6* by stating that such payments of resident withholding tax may be varied to correct errors.

Clause 64 inserts a new *section NF 8A* to provide that deductions of resident withholding tax from Maori authority distributions will be treated as a Maori authority credit for the purpose of the credit being used against the member's income tax liability.

Clause 65 amends *section OB 1*. Definitions are consequentially amended to reflect other amendments in the bill, and section references are corrected.

The main amendments include:

- an amendment to the definition of *available subscribed capital* to include in consideration, taxable income derived by a Maori authority in the 2003–04 or an earlier income year; and
- new definitions of *base ratio* and *benchmark distribution*; and
- an amendment to the definition of *continuity provisions* to set out which provisions apply to a Maori authority that is a company; and

- amendments to the definitions of *employer monthly schedule* and *gross tax deductions* to include PAYE intermediaries as if they were an employer; and
- repealing the definitions of *European* and *Maori*; and
- replacing the definition of *Maori authority*; and
- new definitions of *Maori authority credit*, *Maori authority credit account*, *Maori authority distribution penalty tax*, *Maori authority credit account return*, *Maori authority rules*, and *taxable Maori authority distribution*; and
- expanding the definition of *member* to include a recipient of a distribution from a Maori authority; and
- a new definition of *PAYE intermediary*; and
- an amendment to the definition of *refundable credit* to include a Maori authority credit; and
- an amendment to the definition of *residual income tax* to include references to sections MF 5(4) and MF 10(3); and
- replacing the definition of *terminal tax date*.

Clause 66 inserts a new *section OB 3A* defining when a marae has a charitable purpose and therefore can be treated as a charity.

Clause 67 amends *section OZ 1* by inserting a definition of *Maori authority rules*. The definitions of *PAYE rules*, *provisional tax rules* and *trust rules* are also consequentially amended.

Clause 68 amends *Schedule 1, Part A* to reduce the basic rate of income tax for the taxable income of a Maori authority, from 25 cents to 19.5 cents, for every \$1 of taxable income.

Clause 69 consequentially amends *Schedule 13, Part A* as a result of the new terminal tax provision.

Clause 70 amends *Schedule 14* by defining the rate of resident withholding tax deductions for a Maori authority.

Part 3

Amendments to Tax Administration Act 1994

Clause 72 amends *section 3* to:

- repeal the definition of *acceptable interpretation*; and
- replace the definition of *arrangement*; and

- amend the definition of *civil penalty* to include a promoter penalty; and
- amend the definition of *deferrable tax* to exclude the definition of *non-deferrable tax*; and
- repeal the definition of *Maori*; and
- consequentially amend the definition of *tax position*.

Clause 73 amends *section 16* to provide that an occupier of premises must give reasonable assistance to the Commissioner and to clarify who may be given authority to enter the occupier's premises.

Clause 74 inserts a new *section 16A* giving the Commissioner or an officer of the Department authorisation to remove and make copies of books or documents accessed during an investigation.

Clause 75 amends *section 17* to give the Commissioner the authorisation to inspect books and documents held by a foreign entity that is controlled by a New Zealand resident, and to require written information to be furnished to a particular Inland Revenue office.

Clause 76 amends *section 24* to include a PAYE intermediary as an employer as far as records to be kept.

Clause 77 replaces *section 31* to require a Maori authority to give notices to members when distributions are made.

Clause 78 amends *section 33* to allow a trust, society or institution to which section CB 4(1)(c) or CB 4(1)(e) of the Income Tax Act 1994 applies, to furnish a return of income if the trust, society or institution receives a distribution from a Maori authority.

Clause 79 amends *section 33A* to include taxable Maori authority distributions in the \$200 threshold below which a return of income is not required.

Clause 80 consequentially amends *section 36A* to provide references to a PAYE intermediary.

Clause 81 inserts a new *section 36BA* to allow the Commissioner to prescribe one or more electronic formats which can be used to provide details required under Part MBA of the Income Tax Act 1994 (relating to tax pooling accounts).

Clause 82 consequentially amends *section 36C*.

Clause 83 amends *section 39* to replace a redundant reference.

Clause 84 amends *section 41A* by omitting a reference to repealed *section HK 14*.

Clause 85 amends *section 48* to extend the section's application to include PAYE intermediaries.

Clause 86 replaces *section 57* to require a Maori authority to furnish a return of the authority's taxable income to the Commissioner.

Clause 87 inserts a new *section 68B* to require a Maori authority that makes a distribution to furnish to the Commissioner a Maori authority distribution statement.

Clause 88 inserts a new *section 69A* to require a Maori authority to furnish to the Commissioner an annual Maori authority credit account return in the prescribed form.

Clause 89 inserts a new *section 70A* to require a Maori authority, in particular cases, to furnish an annual Maori authority credit account return to the Commissioner in the prescribed form.

Clauses 90 to 93 amend *sections 80B, 80C, 80F* and *80H* as a result of the new terminal tax date provision.

Clause 94 inserts a new *section 97A* to allow the Commissioner to assess a Maori authority for Maori authority distribution penalty tax.

Clause 95 amends *section 120C* to include in the definition of *tax paid*, interest credited to an intermediary's tax pooling account, and an amount transferred from the tax pooling account to a taxpayer's account. An amendment is also made to the definition of *date interest starts* for amounts credited to a tax pooling account.

Clause 96 inserts new *sections 120OA* and *120OB* to vary the definitions for determining whether interest is chargeable or payable to a PAYE intermediary, and to extend the application of the interest rules to a PAYE intermediary in their capacity as a PAYE intermediary.

Clause 97 inserts a new *section 120OC* to extend the application of the interest rules to an intermediary who operates a tax pooling account, in the intermediary's capacity as an intermediary, as if the intermediary were a taxpayer.

Clause 98 repeals *section 120T(2)*.

Clause 99 consequentially amends *section 125* to omit references to repealed sections.

Clause 100 amends *section 128* to require a taxpayer to pay all tax in a dispute, before the dispute is settled, if the Commissioner considers that there is a risk the revenue will not be paid.

Clause 101 repeals *section 128A*.

Clause 102 consequentially amends *section 138E* to omit references to repealed sections.

Clause 103 amends *section 138I* to remove references to non-defer-able tax.

Clause 104 repeals *section 138J*.

Clause 105 amends *section 138P* to provide that if a taxpayer proves in court, on the balance of probabilities, that an assessment is excessive by a specified amount, then the court must reduce the assessment by that amount.

Clause 106 amends *section 139AA* to allow a non-electronic filing penalty to be imposed on a PAYE intermediary.

Clause 107 inserts a new *section 140CA* to provide for a Maori authority distribution penalty tax of 10% if a Maori authority credit account has an end of year debit balance.

Clause 108 inserts a new *section 140DA* to provide that Maori authority distribution penalty tax is treated as income tax for particular sections of the Income Tax Act 1994 and the Tax Administration Act 1994.

Clause 109 consequentially amends *section 141* to add a reference to new *section 141EA*.

Clause 110 amends *section 141A* to reduce the shortfall penalty for not taking reasonable care from 20% to 10%, unless the taxpayer subsequently does not take reasonable care, in which case it remains at 20%.

Clause 111 amends *section 141B* to change the name of the penalty for unacceptable interpretation to unacceptable tax position. The shortfall penalty is reduced from 20% to 10%, unless the taxpayer subsequently does take an unacceptable tax position, in which case it remains at 20%.

Clause 112 amends *section 141C* to reflect a change in terminology.

Clause 113 amends *section 141D* to reduce the shortfall penalty tax for taking an abusive tax position to 20% of the resulting tax shortfall if the taxpayer invests in an arrangement to repay the

shortfall, the tax shortfall is less than \$50,000 and the taxpayer provides independent advice stating that the taxpayer's tax position is not an abusive tax position.

Clause 114 inserts new *sections 141EA* and *141EB*. New *section 141EA* introduces a promoter penalty. New *section 141EB* defines a *promoter*.

Clauses 115 and *117* consequentially amend *sections 141G* and *141I* respectively to include a reference to *section 141EA* (the proposed promoter penalty).

Clause 116 consequentially amends *section 141H* to reflect the new name of the penalty for unacceptable tax position.

Clause 118 inserts a new *section 141JAA* limiting the amount to be paid in respect of a shortfall penalty imposed for lack of reasonable care.

Clause 119 inserts a new *section 141JB* to provide that certain penalties apply to a PAYE intermediary if the employer has paid gross wages and provided correct payroll information. The employer remains liable for penalties if the gross wages are not paid or incorrect payroll information is provided to the PAYE intermediary.

Clauses 120 and *121* consequentially amend *sections 141K* and *141L* (respectively) to include a reference to *section 141EA* (the proposed promoter penalty).

Clause 122 consequentially amends *section 142* to provide that the due date for payment of a late filing penalty is the terminal tax date for the income year to which the annual tax return relates.

Clause 123 amends *section 156A* to allow the Commissioner to recover from a PAYE intermediary a late filing penalty imposed on the intermediary.

Clause 124 consequentially amends *section 157* to extend the section's application to amounts paid to a tax pooling intermediary; and in certain cases to a PAYE intermediary.

Clauses 125 to *127* amend *sections 167* to *169* to extend their application to PAYE intermediaries if an employer has paid gross wages and provided correct information to allow the intermediary to complete an employer monthly schedule.

Clause 128 inserts a new *section 182* to allow the Commissioner to remit Maori authority distribution penalty tax in certain situations.

Clause 129 amends *section 183A* to extend the section's application to include Maori authority distribution penalty tax. The section allows the Commissioner to remit the penalty in certain situations.

Clause 130 repeals *section 183C(2)*.

Clause 131 inserts a new *section 186* to extend the application of particular provisions in Part XI (Remission, Relief, and Refunds) to a PAYE intermediary in their capacity as a PAYE intermediary.

Part 4

Amendments to Other Acts

Amendments to Goods and Services Tax Act 1985

Clause 133 amends *section 2* by inserting new definitions of *content* and *telecommunications services*. The definition of *taxable supply* is also consequentially amended to refer to new *section 11AB*.

Clauses 134, 139, 140 and *142* consequentially amend *sections 5, 21I, 24* and *60* to refer to new *section 11AB*.

Clause 135 amends *section 8* to provide a place of supply rule for offshore telecommunications suppliers.

Clause 136 inserts a new *section 8A* to provide an alternative place of supply rule for offshore telecommunications suppliers.

Clause 137 amends *section 11A* to zero-rate the domestic leg of an international cruise. An amendment is also made to ensure that the section does not apply to supplies of telecommunications services.

Clause 138 inserts a new *section 11AB* to provide a specific zero-rating provision for telecommunications services.

Clause 141 amends *section 51* to provide that non-resident telecommunications suppliers do not have to register for GST if they supply telecommunications services in certain cases.

Amendments to Income Tax Act 1976

Clause 144 inserts a new *section 191WF* to provide that a company that transfers depreciable property on a qualifying amalgamation may claim a depreciation deduction in the year of amalgamation for the period up to the amalgamation.

Amendments to Student Loan Scheme Act 1992

Clause 146 amends *section 2* to provide a definition of *PAYE intermediary*.

Clauses 147 to 150 and 152 to 154 amend *sections 18, 19, 24, 25, 51, 67 and 77* to allow a *PAYE intermediary* to make a repayment deduction from salary or wages paid by an employer to an employee who has a student loan, and to extend the application of the Act to *PAYE intermediaries* in the same way as the Act applies to employers who must make repayment deductions.

Clause 150 also amends *section 25* to omit a reference to repealed *section NC 17*.

Clause 151 substitutes a new *section 30(1)* to provide that payment of a terminal repayment obligation is to be made on the borrower's terminal tax date.

Amendments to Child Support Act 1991

Clauses 156 to 159 amend *sections 147, 165, 166 and 171* respectively to include references to a *PAYE intermediary* for cases where the intermediary carries out an employer's obligation to make child support deductions.

*Amendments to Injury Prevention, Rehabilitation, and
Compensation Act 2001*

Clause 161 amends *section 193* by omitting a reference to repealed *section MC 2*.

Clause 162 amends *section 221* to allow a *PAYE intermediary* to carry out an employer's obligation to deduct the earner's premium levy.

Clause 163 amends *section 316* to extend the application of the offences that may apply to include a *PAYE intermediary* who makes deductions.

Clause 164 amends *Schedule 4* by including references to *PAYE intermediaries*, and omitting references to repealed *sections MC 2 and NC 17*.

Regulatory impact and compliance cost statement

One goal in formulating tax law is to ensure that the costs of the tax system are minimised. However, compliance costs must be balanced by the need to protect the tax base, ensure an efficient tax system, and to treat all taxpayers fairly. The majority of the proposals in the bill are aimed at reducing tax-related compliance costs, and all aim to improve the efficiency and equity of the tax system.

Compliance cost statement

The following proposals in the bill reduce compliance costs:

- *Tax pooling:* Tax pooling will reduce compliance costs associated with the payment of provisional tax. It will do so by providing an administrative mechanism that will allow taxpayers to manage the uncertainty inherent in the calculation and payment of the tax. They will have the opportunity to mitigate their tax payment risks, along with their exposure to use of money interest.

Another advantage arising from tax pooling is that it will involve the introduction of intermediaries, who will provide a communication link between taxpayers and Inland Revenue. To the extent that participating taxpayers choose to deal with their pooling intermediary, their need to communicate with Inland Revenue regarding their tax payments will be reduced.

- *PAYE intermediaries:* The ability of employers to voluntarily transfer their PAYE obligations to accredited intermediaries will reduce compliance costs for employers. The initiative will reduce the barriers to employers of using intermediaries to meet PAYE obligations and support those who currently use intermediaries to help meet those obligations.

One of the key benefits of the initiative is that employers' exposure to the risk of non-compliance with the PAYE rules would be greatly reduced. Employers would be able to transfer the responsibility of calculating and paying PAYE and filing returns to the extent that they provide the intermediary with correct payroll information and employees' gross wages as agreed between them. Currently, employers who fail to pay the correct PAYE deduction by the due date could face both late payment and shortfall penalties. Late filing penalties also apply if PAYE returns are not filed on time. In addition,

outstanding PAYE balances of more than \$100 attract use of money interest charges. An important outcome is that employers will be able to transfer resources spent in meeting their PAYE obligations to other activities in their business.

- *Depreciation and amalgamation:* These proposals will reduce compliance costs by clarifying the interaction of the depreciation rules and the amalgamation rules. They will ensure that companies which amalgamate are treated equitably in respect of their depreciation deductions.
- *Reimbursement of interest expenses:* The proposal will reduce compliance costs by removing any uncertainty that occurs when a person reimburses another party for interest expenses incurred as part of film production expenditure. The person will be able to deduct the reimbursement as if it were film production expenditure they had incurred themselves.
- *Conduit tax relief, branch equivalent tax accounts and residual income tax:* These proposals will slightly reduce compliance costs as they provide certainty that the law is as was originally intended.
- *Rationalising the terminal tax payment date provisions:* Compliance costs will be reduced because it will be easier for taxpayers to determine their terminal tax payment dates. Other provisions that refer to terminal tax payment dates can be made significantly more concise as they can refer to one provision instead of several.
- *Onus of proof:* This proposal will allow the courts to reduce the Commissioner's assessments when the taxpayer can prove that the amount assessed is excessive. This is likely to reduce taxpayers' compliance costs in reducing the costs of disputing assessments.
- *Tax in dispute:* This proposal is likely to reduce compliance costs in that taxpayers generally will no longer be required to pay half the amount being disputed.
- *Capping shortfall penalties:* This proposal will reduce compliance costs in that taxpayers will no longer dispute cases in order to reduce the penalty.
- *Promoter penalties:* This proposal will reduce compliance costs as promoters of arrangements will be more accountable

for their actions and take more care in ensuring that the tax effects of the arrangements they offer are correct.

- *Telecommunications services:* The amendments reduce compliance costs for telecommunications suppliers.

The following proposals in the bill increase compliance costs:

- *Unacceptable interpretation:* This proposal will increase compliance costs in that taxpayers will be required to take extra care in interpreting the legislation in cases where there is a significant amount of tax at stake. To counter this increase the thresholds over which this penalty is imposed are being increased. Those taxpayers taking tax positions which fall under the proposed new increased thresholds will have reduced compliance costs.
- *International cruises:* The compliance costs of zero-rating international cruises are likely to be minimal. The amendment will not result in a significant change in practice, as GST is not currently being returned on these supplies.

The following changes in the bill do not change compliance costs:

- *Annual rates:* The amendment to confirm the annual rates of income tax for the 2002–03 income year will have no impact on compliance costs.
- *Taxation of Maori organisations:* The Maori authority proposals are aimed at clarifying and simplifying tax compliance for Maori authorities and minimising the extent to which individuals who derive benefits from these organisations must interact with the tax system. Like all reforms that involve significant change, the new rules will involve an initial compliance cost as taxpayers and their advisors become better acquainted with the new changes.

On going compliance costs for Maori authorities will vary from entity to entity depending on the sophistication of their internal systems, access to expert tax advice and the knowledge of their trustees or administrators but these costs should not be any greater than what Maori authorities currently face. Individuals who derive benefits from Maori authorities may face lower compliance costs, as there will be less need for them to file a tax return or request a personal tax summary at the end of the year.

Overall, people affected by the proposed changes should receive compliance benefits from having a modern and clear set of legislative provisions that are more relevant to their specific needs and which fit better with other parts of the income tax legislation.

- *Charities:* The amendments do not change compliance costs.
- *Good behaviour:* This proposal is likely to have no effect on compliance costs. It is aimed at ensuring those taxpayers who have a history of good behaviour are not overly penalised when their compliance does lapse. The proposal is likely to increase the incentives on taxpayers to voluntarily comply.
- *Information gathering powers:* The proposal reduces compliance costs by removing uncertainty, by ensuring that the legislation clearly specifies the obligations on both the Commissioner and the taxpayer.

Consultation

The proposals contained in the bill were, with the exception of an anti-avoidance measure and minor remedial amendments, subject to the Generic Tax Policy Process, a robust consultative and tax policy development process. For most measures in the bill, this process included the release of the following discussion documents:

- *Taxation of Maori organisations*
- *More time for business*
- *Tax and charities*
- *Taxpayer compliance, standards and penalties: a review*
- *GST and imported services*

To support the discussion document on the taxation of Maori organisations, information workshops were held in 22 regions around the country. The purpose of these workshops was to raise awareness about the proposals set out in the discussion document and to encourage people to make submissions on the proposed changes.

Specific consultation was undertaken with a number of professional groups, industry representatives and individual taxpayers, according to their expertise on the proposed amendments. This included consultation with:

- Cruise New Zealand
- Federation of Maori Authorities
- Institute of Chartered Accountants of New Zealand
- New Zealand Law Society
- Telecom New Zealand Limited
- The Maori Trustee
- Trustees and administrators of Maori organisations
- Vodafone Group (UK)
- Vodafone New Zealand Limited
- A number of small businesses, charitable organisations and tax advisers

A detailed commentary, providing a thorough analysis of the bill's provisions and their intended application, is available at www.taxpolicy.ird.govt.nz.

Hon Dr Michael Cullen

Taxation (Annual Rates, Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the **Taxation (Annual Rates, Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2002**.

2 Commencement

This Act comes into force on the date on which it receives the 5
Royal assent.

Part 1
Annual Rates of Income Tax for 2002–03

- 3 Rates of income tax for 2002–03 income year**
- (1) Income tax imposed by section BB 1 of the Income Tax Act 1994 must, for the 2002–03 income year, be paid at the basic rates specified in Schedule 1 of that Act. 5
- (2) The Taxation (Annual Rates of Income Tax 2001–02) Act 2001 is repealed.

Part 2
Amendments to Income Tax Act 1994 10

- 4 Income Tax Act 1994**
- This Part amends the Income Tax Act 1994¹.
¹ 1994, No 164
- 5 Exempt income—interest**
- (1) In section CB 1(1)(c), “, HK 14,” is omitted.
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years. 15
- 6 Non-profit bodies’ and charities’ exempt income**
- (1) In section CB 4(1)(c) and CB 4(1)(e), “and maintained” is inserted after “established”.
- (2) **Subsection (1)** applies to the 2003–04 and subsequent income years. 20
- 7 Section DI 2 replaced**
- (1) Section DI 2 is replaced by:
- “DI 2 **Deduction to Maori authorities for donations to Maori associations or donee organisations** 25
- “(1) A Maori authority may deduct—
- “(a) a donation it makes to a Maori association within the meaning of the Maori Community Development Act 1962 for the purpose of that Act; and
- “(b) a gift of money it makes to a society, institution, organisation, trust or fund of any of the kinds referred to in section KC 5(1) of this Act. 30

- “(2) The deduction allowed in an income year may not be more than 5% of the amount that would be, but for this section, the Maori authority’s net income in the year.”
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years. 5
- 8 Section DJ 4 replaced**
- (1) Section DJ 4 is replaced by:
- “DJ 4 Deductions in respect of gifts of money by companies**
- “(1) A company may deduct gifts of money made to a society, institution, organisation, trust or fund of any of the kinds referred to in section KC 5(1). 10
- “(2) The deduction for the total of all gifts made by the company in the income year may not be more than 5% of the amount that would be, but for this section, the company’s net income in the year. 15
- “(3) To apply this section, a company that is a close company must have its shares quoted on the official list of a recognised exchange.”
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years. 20
- 9 Transfer of depreciable property between associated persons**
- (1) After section EG 17(3), the following is inserted:
- “(3A) Unless subsection (3) applies, subsection (1) applies if a taxpayer has acquired property from an associated person as part of an amalgamation that is not a qualifying amalgamation. 25
- “(3B) If **subsection (3A)** applies, the cost of the property to the taxpayer, in subsection (1)(d)(ii) and (1)(e)(ii), is determined in accordance with **section FE 5**.” 30
- (2) **Subsection (1)** applies to property acquired by a taxpayer on and after 14 May 2002 as part of a non-qualifying amalgamation.
- 10 Cash basis holder**
- (1) In section EH 3(7)(a), “or sections HI 1 to HI 5” is omitted. 35

- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- 11 Cash basis person rules for trustees**
- (1) In section EH 28(1) and EH 28(2), “or sections HI 1 to HI 5” is omitted. 5
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- 12 Refunds from adverse event income equalisation accounts**
- (1) In section EI 14(3), “one calendar year” is replaced by “12 months”. 10
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- 13 Cost of producing films**
- (1) After section EO 4(2), the following is inserted: 15
“(2A) If the taxpayer reimburses the other person for any expenditure on interest incurred by the other person, the taxpayer may treat the reimbursed expenditure as film production expenditure.”
- (2) **Subsection (1)** applies to the reimbursement of expenditure incurred in the 1997–98 and subsequent income years. 20
- 14 Transfer of property or obligations under financial arrangements deemed to be at market value**
- (1) In section FE 5(b), “from the amalgamating company” is inserted after “obligations”. 25
- (2) In section FE 5, the following is added as subsection (2):
“(2) For the purpose of section EG 17, the amalgamating company is treated as existing at the time the amalgamated company is treated as acquiring the property or assuming the obligations.”
- (3) **Subsections (1)** and **(2)** apply to property acquired and obligations assumed on and after 14 May 2002 as part of a non-qualifying amalgamation. 30

15 New section FE 6A inserted

(1) After section FE 6, the following is inserted:

**“FE 6A Deduction to amalgamating company for depreciable
property transferred**

Despite section EG 1, in respect of a qualifying amalgama- 5
tion, an amalgamating company is allowed a depreciation
deduction for property transferred to the amalgamated com-
pany for the period beginning on the first day of the income
year in which the amalgamation takes place and ending on the
day before the date of the amalgamation.” 10

(2) **Subsection (1)** applies to the 1995–96 and subsequent income
years.

(3) Despite **subsection (2)**, **subsection (1)** does not apply if a taxpayer
has not claimed a deduction for depreciation for the income
year in which the amalgamation occurs in a return of income 15
filed before 14 May 2002.

**16 Rules for determining New Zealand foreign attributed
income group debt percentage**

(1) In section FH 3(3), in the formula, item NRS is replaced by:
“NRS is either— 20

“(a) if the group member receives conduit tax relief by way
of an income tax rebate under section KH 1, the per-
centage of the relevant group member’s shareholders
not resident in New Zealand used to calculate the rebate
under section KH 1(2); or 25

“(b) if the group member receives conduit tax relief by
reducing its dividend withholding payment under
section NH 7, the average of the percentages of the
relevant group member’s shareholders not resident in
New Zealand used to calculate the reduction under 30
section NH 7(1):”.

(2) **Subsection (1)** applies to the 1998–99 and subsequent income
years.

(3) Despite **subsection (2)**, **subsection (1)** does not apply if a taxpayer
has filed a return of income on or before 14 May 2002 apply- 35
ing section FH 3(3), as it was before the enactment of **section
16(1)** of the **Taxation (Annual Rates, Maori Organisations, Taxpayer
Compliance and Miscellaneous Provisions) Act 2002**.

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- (4) If **subsection (3)** applies, **subsection (1)** applies to the earlier of—
- (a) the income year following the income year to which the return of income relates and subsequent income years;
 - or
 - (b) the 2002–03 and subsequent income years. 5
- 17 Income assessable to beneficiaries**
- (1) Section GC 14(2) is repealed.
 - (2) **Subsection (1)** applies on the first day of the 2004–05 income year.
- 18 New section GC 27A inserted 10**
- (1) After section GC 27, the following is inserted:
“GC 27A **Arrangement to obtain a tax advantage with respect to Maori authority credit account provisions (Part MK)**
“(1) For the purpose of this section, there is an arrangement to obtain a tax advantage if the arrangement is for the sale or other disposition of shares or the issue of shares in a Maori authority that is a company and— 15
 - “(a) a party to the arrangement might reasonably have anticipated that a distribution would be made in respect of the shares in an income year; and 20
 - “(b) a party to the arrangement might reasonably have anticipated that a Maori authority credit would be attached to the distribution; and
 - “(c) a party to the arrangement might reasonably expect that the party will, or will not, be able to obtain a tax advantage in relation to the Maori authority credit; and 25
 - “(d) the purpose, not being an incidental purpose, of the arrangement is that a party to the arrangement would obtain a tax advantage.
 - “(2) For the purpose of this section, there is an arrangement to obtain a tax advantage if in respect of any one or more distributions by a Maori authority, whether occurring in the same imputation year or over more than one imputation year, the Maori authority streams the distributions, or the attachment of Maori authority credits to distributions, in such a way as will give higher credit values to members who will obtain a tax advantage from them than to members who will not so obtain 35

- a tax advantage or who may reasonably be expected to derive a lesser benefit from any tax advantage.
- “(3) For the purpose of **subsection (2)**, a distribution by a Maori authority is treated as having a higher credit value than another distribution if— 5
- “(a) the distribution has a Maori authority credit attached to it, and the other distribution does not; or
 - “(b) the base ratio of the distribution is higher than that of the other distribution.
- “(4) If the Commissioner determines that there is an arrangement to obtain a tax advantage, the Commissioner may— 10
- “(a) determine whether the arrangement gives rise to an account advantage, a tax credit advantage, or both; or
 - “(b) in the case of an arrangement described in **subsection (2)** to which a person, other than the Maori authority, is a party, determine whether **subsection (5)** or **subsection (6)** should apply; or 15
 - “(c) determine the amount of the Maori authority credit that is the subject of the arrangement; or
 - “(d) determine the imputation year in which the arrangement occurred or commenced, being the year in which the Commissioner considers that the first reasonably identifiable step towards implementation of the arrangement occurred. 20
- “(5) If the Commissioner determines that there is an arrangement to obtain a tax advantage and that this subsection should apply, the following provisions apply: 25
- “(a) a member who, but for this paragraph, would obtain a tax credit advantage from the arrangement is not entitled to a credit of tax under **section LD 3A**; and 30
 - “(b) a debit arises to the Maori authority credit account of a Maori authority that, but for this paragraph, would obtain both a tax credit advantage and an account advantage from the arrangement; and
 - “(c) the amount of the credit of tax or refund to which the member is not entitled and the debit that arises must both be the same amount as the Maori authority credit determined under **subsection (4)(c)** to be the subject of the arrangement; and 35

- “(d) the debit arises in the imputation year determined under **subsection (4)(d)** to be that in which the arrangement occurred or commenced.
- “(6) If the Commissioner determines that there is an arrangement to obtain a tax advantage to which **subsection (2)** applies and to which only the Maori authority referred to in that paragraph is a party, or if the Commissioner determines that there is an arrangement within the meaning of that paragraph and that this subsection should apply in respect of the arrangement, the following provisions shall apply: 5 10
- “(a) a further debit arises to the Maori authority’s Maori authority credit account; and
- “(b) the further debit is equal to the amount of the Maori authority credit determined under **subsection (4)(c)** to be the subject of the arrangement; and 15
- “(c) the further debit arises in the imputation year determined under **subsection (4)(d)** to be that in which the arrangement occurred or commenced; and
- “(d) to the extent to which this subsection applies to the arrangement, **subsection (5)** does not apply to the arrangement. 20
- “(7) As soon as is convenient after a determination is made, the Commissioner must give notice of the determination to the Maori authority in respect of whose Maori authority credit account the determination is made. 25
- “(8) A notice may be included in a notice of assessment under section 111(1) of the Tax Administration Act 1994, or a determination under **section MK 9** of this Act.
- “(9) Failure to give notice does not invalidate the Commissioner’s determination. 30
- “(10) In this section—
- “**account advantage** means the arising of a credit to a Maori authority credit account in accordance with **section MK 4**
- “**tax credit advantage** means the allowance, in whole or in part, of a credit of tax in accordance with **section LD 3A.**” 35
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.

19	Group investment funds	
(1)	In section HE 2(1A), “, HK 14,” is omitted.	
(2)	Subsection (1) applies to the 2004–05 and subsequent income years.	
20	Payment of qualifying company election tax	5
(1)	Section HG 12(1)(a) is replaced by:	
	“(a) make payment to the Commissioner of the qualifying company election tax no later than the company’s terminal tax date for the income year in which the relevant time, as defined in section HG 11(2), falls; and”.	10
(2)	Subsection (1) applies to the 2002–03 and subsequent income years.	
21	Gross income assessable to beneficiaries	
(1)	Section HH 3(6) is repealed.	
(2)	Subsection (1) applies on the first day of the 2004–05 income year.	15
22	Exceptions	
(1)	In section HH 3E(2), “the Maori trustee or” is omitted.	
(2)	Subsection (1) applies to the 2004–05 and subsequent income years.	20
23	Trustee income	
(1)	Section HH 4(8) is repealed.	
(2)	Subsection (1) applies on the first day of the 2004–05 income year.	
24	Part HI replaced	25
(1)	Part HI is replaced by:	
	“Subpart I—Maori authorities	
	“HI 1 Application of this subpart	
	“(1) A Maori authority may either—	
	“(a) apply this subpart; or	30
	“(b) apply the other provisions of this Act as if this subpart did not exist.	

“(2) If a Maori authority is a company and elects to apply this subpart, the Maori authority is still treated as a company for the purpose of the continuity provisions.

“**HI 2 Distributions by Maori authority**

The following amounts are treated as distributions from a Maori authority: 5

“(a) an amount that is paid or credited by the Maori authority to a member in any manner or under any name:

“(b) an amount that is applied by the Maori authority exclusively for the member: 10

“(c) an amount that is advanced by the Maori authority to a member to the extent to which the making of the advance is not a bona fide investment by the Maori authority but is virtually a distribution of income:

“(d) if property is disposed of by the Maori authority to a member without consideration in money or money’s worth, or for a consideration that is less than the market value of the property, the amount by which the market value of the property is more than the amount of consideration: 15 20

“(e) if property is disposed of by a member to the Maori authority for a consideration that is more than the market value of the property, the amount by which the market value of the property is less than the amount of consideration. 25

“**HI 3 Treatment of amounts distributed by Maori authority**

“(1) An amount distributed by a Maori authority to a member during an income year is treated as—

“(a) being distributed from gross income; and

“(b) gross income derived by the member in the income year. 30

“(2) **Subsection (1)** does not apply to—

“(a) an amount distributed that does not represent gross income derived by the Maori authority; and

“(b) a non-taxable distribution. 35

“(3) A distribution is treated as being a non-taxable distribution if the distribution is sourced from taxable income derived by the Maori authority in the 2003–04 or a prior income year.

“HI 4 Proportional allocation required if distribution includes amount other than taxable Maori authority distribution

If a Maori authority makes a distribution that consists of a taxable Maori authority distribution and another amount, the Maori authority must allocate an equal proportion of each type of distribution to every member to whom the distribution is made.

5

“HI 5 Distribution includes Maori authority credit attached and RWT deducted

For the purpose of this Act, the gross income of a member includes the amount of a Maori authority credit attached, or treated as being attached under **section NF 8A**, to a distribution.

10

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“Transitional rules

**CONSEQUENCES OF CHANGE IN ENTITY STATUS
FOR PURPOSE OF MAORI AUTHORITY RULES**

Row	If	elects to be	and reverts to being	then	
1	a company	a Maori authority		(a) the company ceases to be an imputation credit account company and the rules relating to a company ceasing to be an imputation credit account company apply; and (b) retained earnings, accumulated profits and capital reserves are treated as an amount from which a non-taxable distribution may be made.	5 10
2	a trust	a Maori authority		trustee income is treated as an amount from which a non-taxable distribution may be made.	
3	a Maori authority	a company		(a) the Maori authority may transfer a credit balance in the Maori authority credit account to the company’s imputation credit account, and section MK 8 applies in respect of a debit balance in the Maori authority credit account; and (b) taxable income derived by the Maori authority in the 2003–04 or an earlier income year is available subscribed capital.	15 20
4	a Maori authority	a trust		(a) the Maori authority ceases being a Maori authority for the purpose of Part MK ; and (b) taxable income derived by the Maori authority in the 2003–04 or an earlier income year is treated as being trustee income.	25 30
	If	elects to be	and reverts to being	then	
5	a Maori authority	a company	a Maori authority	(a) market value calculations are required in accordance with section HI 7 ; and (b) the company must apply row 1 .	35
6	a Maori authority	a trust	a Maori authority	(a) market value calculations are required in accordance with section HI 7 ; and (b) the trust must apply row 2 .	40
How to use this table Read columns from left to right according to the row that fits your situation.					

- “HI 6 **Treatment of companies and trusts that elect to apply this subpart**
- “(1) If a company satisfies the Maori authority definition and elects to apply this subpart, the company must apply **row 1** of the table. 5
- “(2) If a trust satisfies the Maori authority definition and elects to apply this subpart, the trust must apply **row 2** of the table.
- “(3) If a Maori authority is a company and elects to apply the other provisions of this Act that apply to a company, the Maori authority must apply **row 3** of the table. 10
- “(4) If a Maori authority is a trust and elects to apply the other provisions of this Act that apply to a trust, the Maori authority must apply **row 4** of the table.
- “(5) If **subsections (3) or (4)** apply, the Maori authority ceases being a Maori authority for the purpose of **Part MK**. 15
- “HI 7 **Market value calculations**
- “(1) This section applies to a company or a trust that, having previously applied this subpart, subsequently elects to be a Maori authority and apply this subpart again.
- “(2) For the purpose of this Act, the company is treated as— 20
- “(a) disposing of its property immediately before becoming a Maori authority for a consideration that is the market value of the property on the date of disposal; and
- “(b) acquiring the property of the Maori authority for a consideration that is the market value of the property on the date of acquisition. 25
- “(3) The market value of the property is the market value for both the company and the Maori authority.
- “(4) For the purpose of this Act, the trust is treated as— 30
- “(a) disposing of its property immediately before becoming a Maori authority for a consideration that is the market value of the property on the date of disposal; and
- “(b) acquiring the property of the Maori authority for a consideration that is the market value of the property on the date of acquisition; and 35
- “(5) The market value of the property is the market value for both the trust and the Maori authority.

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- “(6) For the purpose of applying depreciation provisions, the cost of property to the Maori authority is the lower of—
- “(a) the market value of the property on the date of acquisition; and
 - “(b) the original cost price of the property to the company or the trust.” 5
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- 25 Section HK 14 repealed**
- (1) Section HK 14 is repealed. 10
 - (2) **Subsection (1)** applies on the first day of the 2004–05 income year.
- 26 Specified activity net losses**
- (1) In section IE 2(5A), “of this Act and section 92 of the Tax Administration Act 1994” is omitted. 15
 - (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.
- 27 Attributed foreign net losses**
- (1) In section IE 3(1), “of this Act and section 92 of the Tax Administration Act 1994 apply” is replaced by “applies”. 20
 - (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.
- 28 Foreign investment fund net losses**
- (1) In section IE 4(1), “of this Act and section 92 of the Tax Administration Act 1994 apply” is replaced by “applies”. 25
 - (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.
- 29 Policyholder net losses**
- (1) In section II 1(1), “and section 92 of the Tax Administration Act 1994 apply” is replaced by “applies”. 30
 - (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.

- 30 Low income rebate**
- (1) In section KC 1(4), “and taxable Maori authority distributions” is inserted after “section HH 3”.
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years. 5
- 31 Rebate for gifts of money**
- (1) In section KC 5(1), “, HK 14,” is omitted.
- (2) Section KC 5(1)(ao) is replaced by:
“(ao) Save the Children New Zealand (and its branches):”.
- (3) After section KC 5(1)(bw), the following is inserted: 10
“(bx) Open Home Foundation International Trust:
“(by) Register of Engineers for Disaster Relief New Zealand:
“(bz) The Hillary Himalayan Foundation:
“(ca) Together for Uganda.”
- (4) In section KC 5(2)(b), “\$500” is replaced by “\$630”. 15
- (5) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- (6) **Subsections (2) to (4)** apply to the 2002–03 and subsequent income years.
- 32 Rebate for interest on home vendor mortgages** 20
- (1) In section KE 1(1), “, HK 14,” is omitted.
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- 33 Determination of amount of credit in certain cases**
- (1) In section LB 1(1), the portion before paragraph (a) is replaced by: 25
“(1) For the purpose of sections CF 6(1), **HI 5**, LB 2(1), **LD 3A** and LD 8, the amount of an imputation credit, dividend withholding payment credit, or Maori authority credit is, where appropriate, as follows:” 30
- (2) After section LB 1(1)(e), the following is inserted:
“(ea) in the case of a Maori authority credit attached to a distribution that has a base ratio greater than the ratio calculated under **section MK 7**, so much of the Maori

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authority credit that would arise if the Maori authority credit of the distribution were the ratio calculated under **section MK 7**.”

- (3) After section LB 1(1)(1), the following is inserted: 5
“(m) in the case of a Maori authority credit determined under **section GC 27A** to be the subject of an arrangement to obtain a tax advantage, so much of the Maori authority credit that remains after it is reduced by the amount referred to in **section GC 27A(6)(b)**.”
- (4) In section LB 1(3)— 10
(a) “or dividend withholding payment credit” is replaced by “, dividend withholding payment credit or Maori authority credit”:
(b) “, or distributions with a Maori authority credit attached,” is inserted after “attached”: 15
(c) in item a of the formula, “, and all Maori authority credits attached to all distributions,” is inserted after “all dividends distributed”.
- (5) **Subsections (1) to (4)** apply to the 2004–05 and subsequent income years. 20

34 Credit of tax for imputation credit

- (1) In section LB 2(3), in item b of the formula, after subparagraph (iii), the following is inserted: 25
“(iiia) in any case where the taxpayer is a Maori authority, the basic rate of income tax for Maori authorities, expressed as a percentage, stated in Schedule 1, Part A, clause 2 and applying for the income year; and”.
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.

35 Tax deductions to be credited against tax assessed 30

- (1) In section LD 1(6)—
(a) in paragraph (a), “or a PAYE intermediary” is inserted after “the employer”:
(b) after paragraph (b), “, or the PAYE intermediary and the employee,” is inserted after “the employee”. 35
- (2) **Subsection (1)** applies on and after 1 April 2003.

36 New section LD 3A inserted

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

“LD 3A Maori authority credit to be credited against income tax assessed

- “(1) If the gross income of a person for an income year includes a taxable Maori authority distribution, the person is, subject to section LB 1, entitled to a credit of tax for an amount equal to the Maori authority credit attached, or treated as being attached, to the distribution. 5
- “(2) The credit of tax must be credited successively against— 10
- “(a) the person’s income tax liability for the income year; and
- “(b) the person’s income tax liability that has not otherwise been satisfied for any year before the income year; and
- “(c) the person’s income tax liability that has not otherwise been satisfied for any year after the income year and, if more than one, in the order of those years; and 15
- “(d) the provisional tax that is due by the person and unpaid for any income year after the income year and, if more than one, in the order of those years. 20
- “(3) The Commissioner must refund to the person an amount equal to the excess of the credit of tax over the amounts which are so credited in accordance with section MD 1 of this Act, and the Tax Administration Act 1994, as if it were tax paid in excess.
- “(4) A credit of tax to which a person is entitled under this section, must be credited so far as it extends, after allowing for any credit of tax allowable in accordance with sections LB 2 and LC 1, and Part LE. 25
- “(5) A credit of tax is not allowed and a refund must not be paid under **subsection (3)**, unless the Commissioner has received— 30
- “(a) the Maori authority distribution statement relating to the Maori authority credit or other evidence in writing evidencing the deduction that is satisfactory to the Commissioner; and
- “(b) such other information as the Commissioner may require. 35
- “(6) If the Commissioner is satisfied that the amount of a credit of tax or refund claimed under this section is in excess of the

- proper amount, the Commissioner may refuse to allow the credit of tax or refund to the extent of the excess.
- “(7) For the purpose of giving effect to this section, the Commissioner may at any time amend any assessment or any determination, despite the time bar.” 5
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- 37 New Part MBA inserted**
- (1) After Part MB, the following is inserted:
- “Subpart BA—Pooling of provisional tax 10
- “MBA 1 **Purpose**
- The purpose of this subpart is to allow taxpayers to manage provisional tax payment risks by—
- “(a) reducing use of money interest on underpaid tax; and
- “(b) increasing use of money interest on overpaid tax. 15
- “MBA 2 **Pooling of provisional tax payments**
- “(1) A taxpayer may pay money to a person (in this subpart called an **intermediary**) who is authorised to make payments to a tax pooling account by the Commissioner.
- “(2) Even if the Commissioner has given approval for a person to 20
- establish a tax pooling account, the Crown is not liable if—
- “(a) the person does not deposit a taxpayer’s payment into the account; or
- “(b) the person makes unauthorised withdrawals from the account; or 25
- “(c) the person fails to request a transfer of funds from the account to the taxpayer’s account with Inland Revenue.
- “MBA 3 **Requirements for persons to make payments to tax pooling account**
- “(1) A person who wishes to establish a tax pooling account must 30
- give notice to the Commissioner stating—
- “(a) the person’s full name, address and tax file number; and
- “(b) that a taxpayer’s payments to the person will be held on trust; and

- “(c) that the person’s administration and information technology systems will ensure that the taxpayer’s personal information and payment details are kept private; and
- “(d) that the person’s record keeping systems will allow the correct amounts to be paid back to taxpayers if the account is wound up; and 5
- “(e) that the person will, before a taxpayer makes a payment, ensure that the taxpayer is aware that the payment is being made to the intermediary, and the person’s obligations to Inland Revenue remain; and 10
- “(f) that the person will disclose the requirements of paragraphs (b), (c), (d) and (e) to a taxpayer who makes payments to the person.
- “(2) The person may establish a tax pooling account once they have received written approval from the Commissioner. 15
- “(3) By giving approval, the Commissioner is not required to oversee or audit the account’s administration.
- “MBA 4 **Tax pooling account**
- “(1) A tax pooling account must be established with Inland Revenue. 20
- “(2) A tax pooling account continues until wound up and does not relate to a particular income year.
- “MBA 5 **Deposits to tax pooling account**
- “(1) When a deposit is made to a tax pooling account, the intermediary must provide the Commissioner with the following details in writing: 25
- “(a) the taxpayers who have contributed to the deposit and their tax file numbers; and
- “(b) the amount each taxpayer has contributed to the deposit.
- “(2) The Commissioner must refund a deposit if the accompanying details are not provided within 5 working days. 30
- “(3) Use of money interest accrues on and after the date an amount is deposited into a tax pooling account, and the portion that relates to an amount that is transferred to a taxpayer or refunded is payable on the date of the transfer or refund. 35

- “(4) An amount deposited into a tax pooling account is only treated as tax paid for the purpose of calculating use of money interest.
- “**MBA 6 Transfers from tax pooling account**
- “(1) An intermediary may request, each month, that the Commissioner transfer all or part of the account balance to a taxpayer’s provisional tax on any date so long as the amount to be transferred exists, or existed, on the effective date of the transfer. 5
- “(2) The intermediary must provide the Commissioner with the following details by electronic means: 10
- “(a) the date on which an amount is to be transferred and the effective date of the transfer if this is a different date; and
- “(b) the amount to be transferred; and 15
- “(c) the tax file number of the taxpayer to whom the amount is to be transferred.
- “(3) The Commissioner must not transfer an amount if the transfer depends on deposit details that have not been provided and the 5 working day period for providing the details has not expired. 20
- “(4) If **subsection (3)** does not apply, the Commissioner may only transfer an amount once transfer details have been provided.
- “(5) Once an amount has been transferred, the Commissioner must provide a statement to— 25
- “(a) the intermediary; and
- “(b) the taxpayer in respect of whom the transfer has been made.
- “(6) An amount transferred and credited to a taxpayer’s account is treated as income tax paid to meet a provisional tax obligation under the provisional tax rules. 30
- “(7) For the purpose of Part IX of the Tax Administration Act 1994, an amount is transferred on the actual date of the transfer, not the effective date of the transfer.
- “**MBA 7 Refunds from tax pooling account**
- An intermediary may request the Commissioner to refund all or part of the account balance. 35

- “MBA 8 Wind up of tax pooling account**
- “(1) An intermediary may wind up their tax pooling account at any time.
- “(2) The Commissioner may require an intermediary to wind up their tax pooling account if the Commissioner considers that— 5
- “(a) the intermediary’s actions are preventing a taxpayer from managing their use of money interest risks; or
- “(b) the intermediary is, or has been, in breach of their obligations under this subpart; or 10
- “(c) the account has gone into deficit; or
- “(d) there is, or is likely to be, consistently less than 100 taxpayers making payments for depositing in the account.”
- (2) **Subsection (1)** applies in respect of provisional tax payments for the 2003–04 and subsequent income years. 15
- 38 Part MC replaced**
- (1) In Part M, subpart C is replaced by:
- “Subpart C—Terminal tax**
- “MC 1 Payment of terminal tax 20**
- “(1) Terminal tax payable by a person for an income year is due on—
- “(a) the 7th day of the month specified in Schedule 13, Part A for payment of terminal tax for the income year, unless January is specified; and 25
- “(b) the 15th day of January, if January is specified in Schedule 13, Part A for payment of terminal tax for the income year.
- “(2) For the purpose of **subsection (1)**, the month specified in Schedule 13, Part A for the payment of terminal tax is that— 30
- “(a) specified in column E, if the person’s return of income giving rise to the terminal tax liability was linked to a tax agent; or
- “(b) specified in column E, if the person requests an income statement under section 80C of the Tax Administration Act 1994 or is issued an income statement under section 80D of that Act and the Commissioner has been notified 35

- that a tax agent will respond to the income statement issued to the person; or
- “(c) specified in column D, in any other case.”
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years. 5
- 39 New section MD 2B inserted**
- (1) Before section MD 3, the following is inserted:
- “MD 2B Limits on refunds of tax in relation to Maori authorities**
- “(1) If a Maori authority becomes entitled to a refund of income tax in accordance with section MD 1, the refund to be paid to the Maori authority must not be more than the credit balance of the Maori authority’s Maori authority credit account at the later of— 10
- “(a) the end of the most recently ending imputation year; or 15
- “(b) the last day of a period for which the Maori authority furnishes a Maori authority credit account return under **section 70A(3)** of the Tax Administration Act 1994; or
- “(c) the last day of a period for which the Maori authority is required by the Commissioner to furnish a Maori authority credit account return under **section 70A(1)** of the Tax Administration Act 1994. 20
- “(2) If a Maori authority has ceased being a Maori authority and becomes entitled to a refund of income tax in accordance with section MD 1 in respect of an income year during which the Maori authority credit account maintained a Maori authority credit account, the refund to be paid to the Maori authority must not be more than the credit balance of the Maori authority’s Maori authority credit account that arose as a debit under **section MK 5(1)(g)** immediately before the Maori authority ceased being a Maori authority. 25 30
- “(3) For the purpose of **subsections (1)** and **(2)**, if the refund is a refund of income tax, the credit balance referred to in those subsections is increased by the amount of a debit that arises to the Maori authority’s Maori authority credit account under **section MK 5(1)(d)** after the date of the first instalment of provisional tax for the income year and before the date upon which 35

- the credit balance is determined under **subsection (1)** or **subsection (2)**.
- “(4) If income tax paid in excess is not refunded to a Maori authority by reason of **subsection (1)** or **subsection (2)**, the income tax not refunded— 5
- “(a) must be credited in payment of income tax or provisional tax that is payable by the Maori authority for the income year in which the entitlement to the refund arose, or for the 2004–05 or a later income year, whether before or after the income year in which the entitlement arose; and 10
- “(b) to the extent that **paragraph (a)** does not apply, must be retained by the Commissioner.
- “(5) For the purpose of section MD 1, a Maori authority that has paid further income tax under **section MK 8** is treated as not having tax paid in excess of the amount properly payable to the extent that any tax paid in excess is further income tax paid by the Maori authority. 15
- “(6) This section does not apply to limit the amount of a refund of tax paid— 20
- “(a) by a Maori authority in respect of income derived by the Maori authority in the 2003–04 or an earlier income year; or
- “(b) for which a credit did not arise to the Maori authority’s Maori authority credit account under **section MK 4(1)(a)**.” 25
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- 40 Credits arising to imputation credit account**
- (1) After section ME 4(1)(e), the following is inserted:
- “(ea) the amount of a Maori authority credit attached to a distribution that is made to the company during the imputation year:” 30
- (2) After section ME 4(1)(j), the following is inserted:
- “(k) in the case of a company that stops maintaining a Maori authority credit account, the amount of the credit balance in the Maori authority credit account on the date that the account is closed.” 35
- (3) After section ME 4(2)(c), the following is inserted:

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- “(ca) in the case of a credit referred to in **paragraph (ea)** of that subsection, on the date that the distribution is made:”.
- (4) After section ME 4(2)(h), the following is inserted:
- “(i) in the case of a credit referred to in **paragraph (k)** of that subsection, on the date that the amount of the credit arises as a debit to the Maori authority credit account under **section MK 5**.” 5
- (5) **Subsections (1) to (4)** apply to the 2004–05 and subsequent income years.
- 41 Debits arising to imputation credit account** 10
- (1) After section ME 5(1)(k), the following is inserted:
- “(ka) the amount of credit balance of the imputation credit account if, during the imputation year, the company establishes a Maori authority credit account:”.
- (2) After section ME 5(2)(j), the following is inserted: 15
- “(ja) in the case of a debit referred to in **paragraph (ka)** of that subsection, immediately before the company elects to apply **Part HI**:”.
- (3) **Subsections (1) and (2)** apply to the 2004–05 and subsequent income years. 20
- 42 Credits and debits arising to branch equivalent tax account of company**
- (1) After section MF 4(1), the following is inserted:
- “(1A) The total of the credit amounts under subsection (1)(a) and (1)(b) must not be more than the amount that results from multiplying the basic rate of income tax, expressed as a percentage, stated in Schedule 1, Part A, clause 5 by the attributed foreign income derived by the company in the income year.” 25
- (2) **Subsection (1)** applies on and after 1 April 1995. 30
- (3) Despite **subsection (2)**, **subsection (1)** does not apply if a taxpayer has filed a return of income on or before 14 May 2002 applying section MF 4 of the Income Tax Act 1994, as it was before the enactment of **section 42(1)** of the **Taxation (Annual Rates, Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2002**. 35

- (4) If **subsection (3)** applies, **subsection (1)** applies to the income year following the income year to which the return of income relates and subsequent income years.
- 43 Debits and credits arising to group branch equivalent tax account** 5
- (1) After section MF 8(2), the following is inserted:
- “(2A) The total of the credit amounts under subsection (1)(a) and (1)(b) must not be more than the amount that results from multiplying the basic rate of income tax, expressed as a percentage, stated in Schedule 1, Part A, clause 5 by the attributed foreign income derived by the consolidated group in the income year.” 10
- (2) **Subsection (1)** applies on and after 1 April 1995.
- (3) Despite **subsection (2)**, **subsection (1)** does not apply if a taxpayer has filed a return of income on or before 14 May 2002 applying section MF 8 of the Income Tax Act 1994, as it was before the enactment of **section 43(1)** of the **Taxation (Annual Rates, Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2002**. 15
- (4) If **subsection (3)** applies, **subsection (1)** applies to the income year following the income year to which the return of income relates and subsequent income years. 20
- 44 New Part MK added**
- (1) Before Part MZ, the following is added:
- “Subpart K—Maori authority credit accounts 25
- “MK 1 **Maori authority to maintain Maori authority credit account**
- “(1) A Maori authority must establish and maintain a Maori authority credit account for each imputation year.
- “(2) A Maori authority must not establish and maintain a Maori authority credit account in respect of an imputation year, or a period within an imputation year, if, during the whole of the imputation year or period, the Maori authority is— 30
- “(a) a Maori authority whose constitution or rules prohibit it from making a distribution of any kind to a member of 35
the Maori authority; or

“(b) a Maori authority which derives only exempt income, not being exempt income under section CB 10 or section CZ 4.

“MK 2 **Balance of Maori authority credit account**

- “(1) The balance of a Maori authority credit account is the difference between the total amounts of credits and debits existing in the account. 5
- “(2) The account has—
- “(a) a credit balance if credits exceed debits:
 - “(b) a debit balance if debits exceed credits. 10

“MK 3 **Maori authority credit account**

- “(1) For each imputation year, a Maori authority must record the following in its Maori authority credit account—
- “(a) the opening balance calculated under **subsection (2)**:
 - “(b) credits arising under **section MK 4**: 15
 - “(c) debits arising under **section MK 5**.
- “(2) The opening balance of the account is—
- “(a) for the first imputation year in which the Maori authority establishes the account, nil:
 - “(b) for subsequent imputation years, the closing balance of the account at the end of the preceding imputation year. 20

“MK 4 **Credits arising to Maori authority credit account**

- “(1) In an imputation year, a Maori authority must record the following amounts in its Maori authority credit account:
- “(a) the amount of any income tax paid by the Maori authority during the imputation year to meet a provisional tax obligation under the provisional tax rules or to satisfy an income tax liability under section BC 9, other than— 25
 - “(i) income tax paid for income tax payable in respect of the 2003–04 or an earlier income year: 30
 - “(ii) in the case of a Maori authority that becomes a Maori authority during the imputation year, income tax paid to the extent that income tax is not more than the amount that would have been the Maori authority’s income tax liability for the year, if the year ended on the day immediately 35

- preceding the day on which the Maori authority became a Maori authority:
- “(iii) income tax paid by way of crediting under **section LB 2(2)**:
 - “(iv) income tax that is paid by way of a crediting of further income tax under **section MK 8(5)**: 5
 - “(b) the amount of further income tax paid by the Maori authority during the imputation year under **section MK 8**:
 - “(c) the amount of a Maori authority credit attached to a distribution that is paid to the Maori authority during the imputation year: 10
 - “(d) the amount of an imputation credit attached to a dividend that is paid to the Maori authority during the imputation year:
 - “(e) an amount equal to any amount of a debit arising to the Maori authority credit account under **section MK 5(1)(f)** (which relates to debits arising in respect of Maori authority credits determined to have been the subject of an arrangement to obtain a tax advantage), to the extent that it is subsequently established that the relevant Maori authority credit should not have been determined to be the subject of such an arrangement: 15
 - “(f) the amount of a resident withholding tax deduction deemed, under section NF 12(b), to have been derived by the Maori authority during the imputation year. 20
- “(2) The credits arise at the following times—
- “(a) in the case of the credits referred to in **subsection (1)(a)** and **(1)(b)**, on the date the relevant tax is paid:
 - “(b) in the case of a credit referred to in **subsection (1)(c)**, on the date the relevant distribution is made: 30
 - “(c) in the case of a credit referred to in **subsection (1)(d)**, on the date the relevant dividend is paid:
 - “(d) in the case of a credit referred to in **subsection (1)(e)** of that subsection, on the date that the relevant debit arose under **section MK 5(2)(f)**: 35
 - “(e) in the case of a credit referred to in **subsection (1)(f)**, on the date that the resident withholding tax is deducted from the resident withholding income.

“MK 5 Debits arising to Maori authority credit account		
“(1) In an imputation year, a Maori authority must record the following amounts in its Maori authority credit account:		
“(a) the amount of a Maori authority credit attached to a distribution paid by the Maori authority during the imputation year:	5	
“(b) the amount of a refund of income tax paid to the Maori authority during the imputation year except to the extent that—		
“(i) the refund is for income tax paid in respect of the 2003–04 or an earlier income year; or	10	
“(ii) the refund is for income tax paid that was applied in satisfaction of an income tax liability for an income year—		
“(A) during which the Maori authority did not maintain a Maori authority credit account;	15	
or		
“(B) during only part of which the Maori authority maintained a Maori authority credit account, in which case the debit to the account is the amount calculated according to the formula:		
$\frac{\text{days}}{365} \times \text{refund}$	25	
where—		
days is the number of days in the year during which the Maori authority maintained a Maori authority credit account; and	30	
refund is the amount of the refund:		
“(c) the amount of an allocation debit arising in respect of the imputation year under section MK 7(4) :		
“(d) in the case of a Maori authority that is a company, the amount of a particular credit in the Maori authority’s Maori authority credit account at any time, in this paragraph referred to as the specified time , not being a credit which has before the specified time been cancelled out by a prior or subsequent debit, unless there is a group of persons—	35	
“(i) whose total minimum voting interests in the Maori authority in the period from the date on	40	

- which the credit arose until the specified time is 66% or more; and
- “(ii) in any case where at any time during that period a market value circumstance exists in respect of the Maori authority, whose total minimum market value interests in the Maori authority in the period is 66% or more: 5
- “(e) the amount of a refund of income tax paid to the Maori authority during the imputation year except to the extent that the refund is not more than the debit arising under **paragraph (d)**: 10
- “(f) the amount of any further debit arising to the Maori authority credit account under **section GC 27A** in relation to a Maori authority credit determined to be the subject of an arrangement to obtain a tax advantage: 15
- “(g) the amount of credit balance in the Maori authority credit account if, during the imputation year, the Maori authority ceases to be a Maori authority:
- “(h) the amount of any overpaid income tax that the Commissioner applies towards the satisfaction of an amount (other than an income tax liability or an instalment of provisional tax) that is due under any provision of this Act or any other of the Inland Revenue Acts, except to the extent that the amount applied— 20
- “(i) is in respect of income tax paid for the 2003–04 or an earlier income year; and 25
- “(ii) is in respect of income tax paid before the date that a debit arises under **paragraph (d)**; and
- “(iii) is not more than the amount of the debit that arises on that date: 30
- “(2) The debits arise at the following times—
- “(a) in the case of a debit referred to in **subsection (1)(a)**, on the date the distribution is made:
- “(b) in the case of a debit referred to in **subsection (1)(b)** or **subsection (1)(e)**, on the date the refund is paid: 35
- “(c) in the case of a debit referred to in **subsection (1)(c)**, at the end of the imputation year in respect of which the allocation debit arises:
- “(d) in the case of a debit referred to in **subsection (1)(d)**, at the specified time referred to in that subsection: 40

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- “(e) in the case of a debit referred to in **subsection (1)(f)**, at the end of the imputation year in respect of which it is determined under **section GC 27A** that the arrangement to obtain tax advantage occurred or commenced:
- “(f) in the case of a debit referred to in **subsection (1)(g)**, immediately before the Maori authority ceases to be a Maori authority: 5
- “(g) in the case of a debit referred to in **subsection (1)(h)**, on the date that the Commissioner applies the amount of over-paid income tax in satisfaction of the amount that is referred to in those paragraphs as due and payable. 10
- “(3) Subject always to the express provisions of this Act, **subsection (1)(d)** is intended to limit the circumstances in which a taxpayer, being a Maori authority, may carry forward a credit for use if the tax benefit arising from its use is obtained or available to be obtained (directly or indirectly), at least to the extent of 66%, only by the same natural persons holding (directly or indirectly) rights in relation to the Maori authority who,— 15
- “(a) by virtue of holding, directly or indirectly, such rights, bore the tax liability giving rise to the credit; or 20
- “(b) held, directly or indirectly, such rights at the time of the event giving rise to the credit.
- “(4) For the purpose of **subsection (1)(d)**— 25
- “(a) in respect of any period referred to in that paragraph the minimum voting interest or market value interest of any person in the Maori authority in the period shall be equal to the lowest voting interest or market value interest (as the case may be) which that person holds in the Maori authority during the period; and 30
- “(b) **section MK 3(2)(b)** does not apply and a credit in the Maori authority’s Maori authority credit account is treated as continuing to exist until treated as being cancelled out by a prior or subsequent debit in accordance with **paragraph (c)**; and 35
- “(c) in determining whether any credit in the Maori authority’s Maori authority credit account has been cancelled out by a prior or subsequent debit,—

- “(i) any amount of debit may be taken into account only once for the purpose of ascertaining whether any credit has been so cancelled out; and
- “(ii) the amount of any debit shall be offset against the amount of any credit in the order in which the credits arise. 5
- “MK 6 **Maori authority may attach Maori authority credit to distribution**
A Maori authority may attach a Maori authority credit to a distribution to which **section HI 2** applies. 10
- “MK 7 **Allocation rules for Maori authority credit account credits**
- “(1) A Maori authority may not attach a Maori authority credit to a distribution to the extent that the distribution’s base ratio is more than the following ratio: 15
- $$\frac{\text{tax rate}}{1 - \text{tax rate}}$$
- where—
- tax rate is the basic rate of income tax for Maori authorities, expressed as a percentage, stated in Schedule 1, Part A, clause 2 and applying for the income year that is concurrent with the imputation year in which the distribution is made. 20
- “(2) If a Maori authority makes a benchmark distribution in an imputation year, the Maori authority must, unless it makes a ratio change declaration in accordance with **subsection (4)**, ensure that the base ratio of every subsequent distribution it makes during the imputation year is the same as the base ratio of the benchmark distribution. 25
- “(3) A benchmark distribution with a base ratio of more than the ratio specified in **subsection (1)** is treated as having the ratio so specified. 30
- “(4) The base ratio of a subsequent distribution may differ from that of a benchmark distribution if—
- “(a) the Maori authority declares, in a ratio change declaration in the prescribed form, that the subsequent distribution is not being made as part of an arrangement to 35

- obtain a tax advantage, and provides such further information as may be prescribed; and
- “(b) the ratio change declaration is delivered to the Commissioner before the date the subsequent distribution is made, or before such later date as the Commissioner may allow in any case or class of cases; and 5
- “(c) the subsequent distribution is not paid as part of an arrangement to obtain a tax advantage.
- “(5) If the base ratio of a subsequent distribution differs from the base ratio of a benchmark distribution in contravention of **subsection (2)**, an allocation debit arises and is calculated according to the formula: 10
- (distributions × ratio) – credits
- where—
- distributions is the total of all taxable Maori authority distributions made by the Maori authority during the imputation year, exclusive of any Maori authority credit attached to the distributions; and 15
- ratio is the lesser of— 20
- (i) the base ratio of the distribution with the greatest base ratio of all taxable Maori authority distributions made by the Maori authority during the imputation year; or 25
- (ii) the ratio calculated under **subsection (1)**; and
- credits is the total of all Maori authority credits attached to distributions made by the Maori authority during the imputation year. 30
- “MK 8 **Further tax payable for end of year debit balance or when Maori authority ceases to exist**
- “(1) If there is a debit balance in a Maori authority’s Maori authority credit account at the end of an imputation year, and the Maori authority is not liable to pay further income tax under **subsection (3)**, then, subject to **subsection (7)**, the Maori authority is liable to pay to the Commissioner an amount of tax by way of further income tax of an amount equal to the debit balance. 35

- “(2) A Maori authority must pay further income tax for which it is liable under **subsection (1)** no later than the 20 June following the end of the imputation year in which there was the debit balance.
- “(3) If there is a debit balance in a Maori authority’s Maori authority credit account immediately before the Maori authority stops being a Maori authority, then, subject to **subsection (7)**, the Maori authority is liable to pay to the Commissioner an amount of tax by way of further income tax of an amount equal to the debit balance. 5 10
- “(4) A Maori authority must pay any further income tax to which it is liable under **subsection (3)** no later than the last day on which it is still a Maori authority.
- “(5) If a Maori authority pays any further income tax for which it is liable under this section, the tax may be credited against any income tax liability that arises or any instalment of provisional tax in accordance with section MB 10 for which the Maori authority or a person becomes liable after the date of payment of the further income tax. 15
- “(6) Subject to this section, and section 101 of the Tax Administration Act 1994, the other provisions of this Act and of the Tax Administration Act 1994 (other than the **Maori authority rules**), so far as they are applicable and with any necessary modifications, shall apply with respect to any further income tax for which a Maori authority is chargeable under this section as if it were income tax. 20 25

“Credits and debits incorrectly recorded

- “MK 9 Correction by Commissioner of credits and debits**
- “(1) If the Commissioner considers that a credit or a debit in a Maori authority’s Maori authority credit account is incorrectly recorded or determines that a debit or a credit has not been recorded at all, the Commissioner must determine the correct debit or credit amount and the date on which the debit or credit should be recorded. 30
- “(2) As soon as is convenient after a determination is made, the Commissioner must give notice of the determination of incorrect entry to the Maori authority. 35

“(3) Unless the Maori authority establishes, in proceedings challenging the determination, that the Commissioner is wrong, the account must be corrected accordingly.

“(4) The notice may be included in a notice of assessment under section 111(1) of the Tax Administration Act 1994.

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“(5) Failure to give notice does not invalidate the Commissioner’s determination.”

(2) **Subsection (1)** applies to the 2004–05 and subsequent income years.

45 New Part NBA inserted

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(1) After Part NB, the following is inserted:

“Subpart BA—PAYE Intermediaries

“NBA 1 Purpose

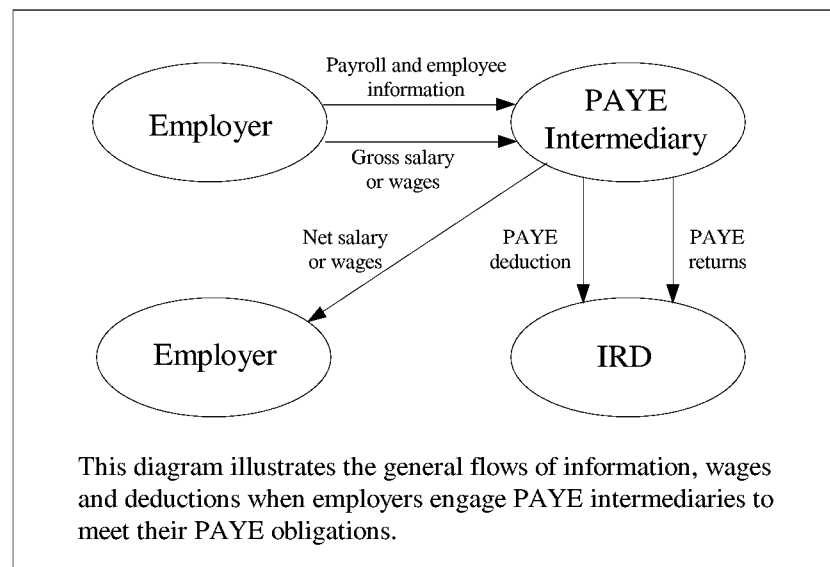
The purpose of this subpart is to—

“(a) allow an employer to enter into an arrangement with a person to transfer their PAYE obligations to the person; and

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“(b) allow persons, accredited by the Commissioner, to make payments and tax deductions in accordance with the PAYE rules on behalf of an employer, and to file returns relating to those payments and tax deductions on behalf of the employer.

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- “NBA 2 Accreditation requirements of PAYE intermediaries**
- “(1) A person who wishes to apply the PAYE rules on behalf of an employer may apply to the Commissioner to be accredited as a PAYE intermediary by giving notice stating that—
- “(a) gross salary or wages paid to the person by an employer will be held on trust; and 5
 - “(b) the person’s administration and information technology systems will ensure that both the employer’s and the employer’s employees’ personal information and payment details are kept private; and 10
 - “(c) the person will, before an employer pays gross salary or wages, ensure that the employer is aware that Inland Revenue does not guarantee payment of the net salary or wages to the employer’s employees; and
 - “(d) the person will disclose the requirements of **paragraphs (a) to (c)** to an employer who pays gross salary or wages to the person. 15
- “(2) The Commissioner may accredit a person as a PAYE intermediary if—
- “(a) the Commissioner is satisfied that— 20
 - “(i) the person will apply the PAYE rules correctly; and
 - “(ii) the person’s information technology systems will allow the person to make payments and file returns in a prescribed format; and 25
 - “(b) the Commissioner certifies that the person’s payroll software, to be used to calculate tax deductions, is appropriate.
- “(3) The Commissioner may specify a period for which a person is accredited as a PAYE intermediary. 30
- “(4) The Commissioner may revoke a person’s accreditation if the Commissioner considers that the person is breaching the intention of the PAYE rules.
- “(5) The Commissioner must give notice of the revocation to the PAYE intermediary and any employer for whom the person is an intermediary, and notice of the date from which the revocation applies. 35
- “(6) A decision made by the Commissioner under this section may not be appealed.

**“NBA 3 Approval by Commissioner of employer
arrangements with PAYE intermediary**

- “(1) An employer who wishes to enter into an arrangement with a PAYE intermediary must notify the Commissioner of the proposed arrangement. The notice must include the following details: 5
- “(a) the name of the intermediary; and
 - “(b) the period for which the intermediary will act on the employer’s behalf; and
 - “(c) the intermediary’s bank account number into which gross salary or wages will be deposited. 10
- “(2) The Commissioner must give notice to the employer approving the proposed arrangement.
- “(3) If the employer enters into the arrangement, the arrangement may only apply to pay periods starting on and after 14 days after the date on which notice approving the proposed arrangement is given by the Commissioner. 15

“NBA 4 Transfer by employer of PAYE obligations to PAYE intermediary

- An employer who enters into an arrangement with a PAYE intermediary must, for the duration of the arrangement and in respect of all of the employer’s employees,— 20
- “(a) pay their employees’ gross salary or wages into the trust account established by the PAYE intermediary and identified in the notice to the Commissioner; and 25
 - “(b) pay the gross salary or wages into the trust account by the date specified by the intermediary; and
 - “(c) keep records of the gross salary or wages paid for each pay period; and
 - “(d) provide information requested by the intermediary within the time agreed by both the employer and the intermediary. 30

“NBA 5 Duties of PAYE intermediaries

- A PAYE intermediary must assume the obligations placed on an employer under the PAYE rules including: 35
- “(a) making tax deductions and paying those deductions to the Commissioner by electronic means and in the prescribed electronic format; and

- “(b) delivering an employer monthly schedule to the Commissioner by electronic means and in the prescribed electronic format; and
- “(c) if required, delivering a remittance certificate to the Commissioner; and 5
- “(d) keeping records in accordance with **section 24** of the Tax Administration Act 1994.
- “NBA 6 Rules for operating trust account**
- “(1) A PAYE intermediary’s trust account must be established at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989 and must be named as a trust account. 10
- “(2) The only deposits that may be made to the account are gross salary or wages paid by employers.
- “(3) The only withdrawals that may be made from the account are— 15
- “(a) payments of net salary or wages to employees of employers; and
- “(b) tax deductions or other deductions that must be paid to the Commissioner in accordance with the Inland Revenue Acts and the Injury Prevention, Rehabilitation, and Compensation Act 2001. 20
- “NBA 7 Termination of employer arrangements with PAYE intermediary**
- “(1) An employer or a PAYE intermediary may end an arrangement by giving the other party and the Commissioner notice. 25
- “(2) A notice must state the date on which the arrangement will end, being a date that occurs after the date on which the notice is given.
- “(3) If an employer has paid gross salary or wages to an intermediary before the date on which the arrangement is to end and the salary or wages relate to all or part of a period after the date on which the arrangement ends, the intermediary must pay the net salary or wages and apply the PAYE rules in respect of the wages as if the arrangement had not ended.” 30
- (2) **Subsection (1)** applies on and after 1 April 2003. 35

- 46 Part NC heading replaced**
- (1) In Part N, subpart C, the subpart heading is replaced by:
“Subpart C—Withholding of PAYE”
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 47 Tax deductions to be made by employers** 5
- (1) In section NC 2, in the section heading, “**or PAYE intermediaries**” is inserted after “**employers**”.
- (2) In section NC 2(1), “, PAYE intermediary” is inserted before “or other person”.
- (3) In the second proviso to section NC 2(1), “or the PAYE intermediary” is inserted after “the employer”. 10
- (4) In section NC 2(4), “employer may, at the employer’s option” is replaced by “employer or PAYE intermediary may, at the employer’s or the PAYE intermediary’s option”.
- (5) In section NC 2(5)(a) and NC 2(5)(b), “or the PAYE intermediary” is inserted after “the employer”. 15
- (6) **Subsections (1) to (5)** apply on and after 1 April 2003.
- 48 Payment to be made by employee where tax deduction exceeds source deduction payment**
- (1) In section NC 5(1)— 20
- (a) “, or to the PAYE intermediary,” is inserted after “the employer” in the first place where it occurs:
- (b) “or the PAYE intermediary” is inserted after “the employer” in the second place where it occurs.
- (2) In section NC 5(2), “or the PAYE intermediary” is inserted after “the employer”. 25
- (3) **Subsections (1) and (2)** apply on and after 1 April 2003.
- 49 Applications of tax codes specified in tax code declarations or tax code certificates**
- (1) In section NC 8(1)(a), “or to a PAYE intermediary” is inserted after “the employer”. 30
- (2) In section NC 8(1A), “or to the PAYE intermediary,” is inserted after “the employer,”.
- (3) In section NC 8(2), “, or to the PAYE intermediary,” is inserted after “employee’s employer”. 35

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- (4) In section NC 8(3)—
- (a) “or to the PAYE intermediary” is inserted after “employee’s employer” in both places where it occurs:
 - (b) “or to the PAYE intermediary” is inserted after “the employer”. 5
- (5) In section NC 8(4), “or to the PAYE intermediary” is inserted after “employee’s employer”.
- (6) In the proviso to section NC 8(4), “or the PAYE intermediary” is inserted after “the employer”.
- (7) In the proviso to section NC 8(7), “or to the PAYE intermediary” is inserted after “the employer”. 10
- (8) In section NC 8(8), “or the PAYE intermediary” is inserted after “the employer” in both places where it occurs.
- (9) In section NC 8(11), “or to a PAYE intermediary” is inserted after “an employer”. 15
- (10) **Subsections (1) to (9)** apply on and after 1 April 2003.
- 50 Employee using incorrect tax code**
- (1) In section NC 12A(1)—
- (a) “or a PAYE intermediary” is inserted after “an employer”: 20
 - (b) “or the PAYE intermediary” is inserted after “the employer” in both places where it occurs.
- (2) In section NC 12A(2), “or a PAYE intermediary” is inserted after “employer”.
- (3) In section NC 12A(3), “or to the PAYE intermediary” is inserted after “employer”. 25
- (4) **Subsections (1) to (3)** apply on and after 1 April 2003.
- 51 Special tax code certificates**
- (1) In section NC 14(4), “or a PAYE intermediary” is inserted after “an employer”. 30
- (2) In section NC 14(5), “or a PAYE intermediary” is inserted after “an employer”.
- (3) **Subsections (1) and (2)** apply on and after 1 April 2003.

- 52 Cross heading amended**
- (1) In the cross heading immediately before section NC 15, “**or PAYE intermediary**” is inserted after “**employer**”.
 - (2) **Subsection (1)** applies on and after 1 April 2003.
- 53 Payment of tax deductions to Commissioner** 5
- (1) In section NC 15(1), in the portion before paragraph (a), “or PAYE intermediary” is inserted after “employer”.
 - (2) In section NC 15(1)(a) and NC 15(1)(b), “or the PAYE intermediary” is inserted after “the employer”.
 - (3) In section NC 15(1)(c) and NC 15(1)(d), “or the PAYE intermediary” is inserted before “has made a deduction”. 10
 - (4) In section NC 15(1)(e), “or the PAYE intermediary” is inserted after “the employer” in the second place where it occurs.
 - (5) In section NC 15(2), “or a class of employers” is replaced by “, a class of employers, a PAYE intermediary, or a class of PAYE intermediaries,”. 15
 - (6) In section NC 15(3), “any employer or class of employers” is replaced by “an employer, a class of employers, a PAYE intermediary, or a class of PAYE intermediaries,”. 20
 - (7) **Subsections (1) to (6)** apply on and after 1 April 2003.
- 54 Cross heading repealed**
- (1) The cross heading immediately before section NC 17 is repealed.
 - (2) **Subsection (1)** applies on the first day of the 2002–03 income year. 25
- 55 Section NC 17 repealed**
- (1) Section NC 17 is repealed.
 - (2) **Subsection (1)** applies on the first day of the 2002–03 income year. 30
- 56 Bond, etc in lieu of tax deductions in case of certain non-resident employees**
- (1) In section NC 18(1)—

- (a) “or PAYE intermediary” is inserted after “any employer”:
- (b) “or the PAYE intermediary” is inserted after “the employer”.
- (2) In section NC 18(2), “or a PAYE intermediary” is inserted after “an employer”, in the first two places where it occurs. 5
- (3) In section NC 18(3)—
- (a) “, PAYE intermediary,” is inserted after “any employer”:
- (b) “or the PAYE intermediary” is inserted after “the employer” in both places where it occurs. 10
- (4) In section NC 18(4), “or the PAYE intermediary” is inserted after “the employer” in both places where it occurs.
- (5) **Subsections (1) to (4)** apply on and after 1 April 2003.
- 57 Amount of tax deductions deemed to be received by employee** 15
- (1) In section NC 19(a), “as between the employer and the employee,” is omitted.
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 58 Application of other provisions to amounts payable under PAYE rules** 20
- (1) In section NC 20(1), “PAYE intermediary,” is inserted after “any employer”.
- (2) In section NC 20(3)(a)(i), “or a PAYE intermediary” is inserted after “an employer”. 25
- (3) Section NC 20(3)(a)(ii) is replaced by:
- “(ii) a deduction required to be made by an employer under section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998 on account of the earner’s premium or earner’s levy payable under that section; or 30
- “(iii) a deduction required to be made by an employer or a PAYE intermediary under section 221 of the

Injury Prevention, Rehabilitation, and Compensation Act 2001 on account of the earner's premium or earner's levy payable under that section; or".

(4) In section NC 20(3), after paragraph (b), "or the PAYE intermediary" is inserted after "the employer". 5

(5) **Subsections (1) to (4)** apply on and after 1 April 2003.

59 Application of RWT rules

(1) After section NF 1(2)(b), and before the proviso, the following is inserted: 10

“(c) distributions to which **section HI 3** applies from a Maori authority:”.

(2) In the proviso to section NF 1(2), “and (b)” is replaced by “, (b) and (c)”.

(3) **Subsections (1) and (2)** apply to the 2004–05 and subsequent income years. 15

60 Deduction of resident withholding tax

(1) In section NF 2(1)(d), in subparagraph (ii) of item c, “dividend:” is replaced by “dividend; and”, and the following is inserted: 20

“(e) to the extent that the payment is a distribution to which **section HI 3** from a Maori authority applies, of an amount calculated according to the formula:

$$(a \times (b + c)) - c$$

where— 25

a is the rate of resident withholding tax, expressed as a percentage, specified in **clause 3** of Schedule 14; and

b is the amount of the distribution (before the deduction of resident withholding tax); and

c is the amount of the Maori authority credit attached to the distribution:”. 30

(2) After section NF 2(2), the following is inserted:

“(2A) If a Maori authority pays resident withholding income, being taxable distributions of property, from which the Maori authority is required to deduct resident withholding tax, the Maori authority— 35

- “(a) must not deduct resident withholding tax from the distribution in accordance with subsection (1); and
“(b) is liable to pay an amount that would be equal to the resident withholding tax that, but for this subsection, would have had to have been deducted, as if the amount were resident withholding tax. 5
- “(2B) For the purpose of this Act and the Tax Administration Act 1994, an amount paid in accordance with **subsection (2A)** is treated as a deduction of resident withholding tax from the distribution.” 10
- (3) In section NF 2(4)(b)(iii), “that company.” is replaced by “that company; or”, and the following is inserted:
“(iv) that payment is a distribution from a Maori authority.”
- (4) In section NF 2(7)— 15
(a) in the portion between paragraphs (b) and (c), “or a distribution from a Maori authority” is inserted after “dividends,”:
(b) in paragraph (d), “, or a distribution from a Maori authority,” is inserted after “dividends,”: 20
(c) in paragraph (h)—
(i) “not interest or dividends” is replaced by “neither interest, dividends, nor a distribution from a Maori authority”:
(ii) “the interest or dividends” is replaced by “the interest, dividends, or distribution from a Maori authority”. 25
- (5) **Subsections (1) to (4)** apply to the 2004–05 and subsequent income years.
- 61 Companies to notify interest payer** 30
- (1) In section NF 2B(1), “or a Maori authority to whom **Part III** applies” is inserted after “company that is a trustee”.
(2) **Subsection (1)** applies to the 2004–05 and subsequent income years.

- 62 Payment of deductions of resident withholding tax to Commissioner**
- (1) In section NF 4(4), “or distributions from a Maori authority” is inserted after “dividends”.
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years. 5
- 63 Resident withholding tax deductions varied to correct errors**
- (1) After section NF 6(2)(b), the following is inserted:
- “(c) in the case of an excess deduction from a distribution from a Maori authority, either— 10
- “(i) a notice including the excess deduction has not been given to a member in accordance with **section 31** of the Tax Administration Act 1994; or
- “(ii) a notice including the excess deduction has been returned and cancelled.” 15
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- 64 New section NF 8A inserted**
- (1) After section NF 8, the following is inserted: 20
- “NF 8A **Resident withholding tax deductions from distributions treated as Maori authority credits**
- “(1) If a Maori authority deducts resident withholding tax in accordance with the RWT rules from a distribution made by the Maori authority, the deduction is treated as a Maori authority credit attached to the distribution by the Maori authority for the purpose of **sections LB 1, LD 3A and MK 7**. 25
- “(2) If a Maori authority deducts resident withholding tax in accordance with the RWT rules from a distribution made by the Maori authority, the Maori authority must provide to the Commissioner such information as the Commissioner may require in relation to the deduction in the annual Maori authority credit account return. 30
- “(3) If a Maori authority deducts resident withholding tax in accordance with the RWT rules from a distribution made by the Maori authority in any year, the Maori authority must, at the time it makes the distribution, complete such information in 35

relation to the distribution as the Commissioner may require, and include it in the Maori authority distribution statement prepared in accordance with **section 68A** of the Tax Administration Act 1994.”

- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years. 5

65 Definitions

- (1) This section amends section OB 1.
- (2) In the definition of **available subscribed capital**, in item b of the formula, at the end of subparagraph (iv), “amalgamation,—” is replaced by “amalgamation; and” and the following is inserted: 10
- “(iva) in the case of a company that was a Maori authority, the taxable income derived by the Maori authority in the 2003–04 or an earlier income year;—”. 15
- (3) After the definition of **banking company**, the following is inserted:
- “**base ratio**, in relation to a distribution from a Maori authority, means an amount calculated according to the formula: 20
- $$\frac{\text{Maori authority credit}}{\text{distribution}}$$
- where—
- Maori authority credit is the amount of the Maori authority credit attached to the distribution, and if a Maori authority credit is not attached, the amount is zero; 25
- and
- distribution is the amount of the distribution made by a Maori authority, exclusive of any Maori authority credit”. 30
- (4) After the definition of **basis of exemption**, the following is inserted:
- “**benchmark distribution**, in relation to a Maori authority and an imputation year, means the first distribution made by the Maori authority in the imputation year”. 35
- (5) In the definition of **company**, paragraph (c) is repealed.

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- (6) The definition of **continuity provisions** is replaced by:
“**continuity provisions**—
“**(a)** means sections GC 2, GC 4, IE 1, IF 1, IG 2(1),
IG 2(2)(e), LE 2(7), ME 5(1)(i), MF 4(1)(e), MF 4(3)(d)
and MG 5(1)(i); and 5
“**(b)** in relation to a Maori authority that is a company,
means sections GC 2, GC 4, IE 1, IF 1 and **MK 5(1)(d)**”.
- (7) In the definition of **employer monthly schedule**, “, or a form
a PAYE intermediary must provide to the Commissioner in
electronic format,” is inserted after “electronic format”. 10
- (8) The definition of **European** is repealed.
- (9) The definition of **gross tax deductions** is replaced by:
“**gross tax deductions**—
“**(a)** in section NC 15, in relation to an employer or a PAYE
intermediary, means tax deductions payable by the 15
employer or the PAYE intermediary in accordance with
the PAYE rules in respect of source deduction pay-
ments; and
“**(b)** in sections ND 3 and ND 4, in relation to an employer,
means tax deductions payable by the employer in accor- 20
dance with the PAYE rules in respect of source deduc-
tion payments”.
- (10) In the definition of **linked to a tax agent**, “sections MC 1,
MC 2, and NC 17” is replaced by “**section MC 1**”.
- (11) The definition of **Maori** is repealed. 25
- (12) The definition of **Maori authority** is replaced by:
“**Maori authority**—
“**(a)** means—
“**(i)** a person established in accordance with an order
made under Te Ture Whenua Maori Act 1993 30
(Maori Land Act 1993); and
“**(ii)** the Maori Trustee in the Maori Trustee’s capacity
as collecting and distribution agent in respect of
rents, royalties or interest; and
“**(iii)** a Maori Trust Board, as defined in section 2 of 35
the Maori Trust Boards Act 1955; and

- “(iv) the Crown Forestry Rental Trust, established by deed in accordance with section 34 of the Crown Forests Act 1989; and
- “(v) the Treaty of Waitangi Fisheries Commission, established under the Maori Fisheries Act 1989; and 5
- “(vi) a settlement entity established to hold, and who holds, assets as part of a Treaty of Waitangi settlement redress; and
- “(b) includes a wholly-owned subsidiary of a Maori authority or a group of Maori authorities 10
- “**Maori authority credit**, in relation to a distribution, means the amount attached to the distribution in accordance with **section MK 6** or treated as being attached to the distribution under **section NF 8A** 15
- “**Maori authority credit account** means the account that must be maintained by a Maori authority in accordance with **section MK 1**
- “**Maori authority distribution penalty tax** means tax payable under **section 140CA** of the Tax Administration Act 1994 20
- “**Maori authority credit account return** means a return that must be furnished under **section 70A** of the Tax Administration Act 1994
- “**Maori authority rules** is defined in **section OZ 1(1)** for the purpose of this Act”. 25
- (13) In the definition of **member**, the following is inserted after paragraph (e):
- “(f) in the **Maori authority rules**, means a person who is legally or beneficially entitled to receive a distribution from a Maori authority”. 30
- (14) After the definition of **payer**, the following is inserted:
- “**PAYE intermediary** means a person who is accredited by the Commissioner as a PAYE intermediary under **section NBA 2**”.
- (15) In the definition of **recognised exchange**, “**DJ 4**” is inserted after “CG 17,”. 35

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- (16) In the definition of **refundable credit**, at the end of paragraph (b), “Part L:” is replaced by “Part L; or”, and the following is inserted:
“(c) in respect of a Maori authority credit”.
- (17) In the definition of **residual income tax**— 5
(a) after paragraph (j), the following is inserted:
“(ja) the amount of a Maori authority credit credited against that income tax in accordance with **section LD 3A**.”;
(b) after paragraph (k), the following is inserted:
“(ka) the amount of any debit set off against that income tax in accordance with section MF 5(4) or section MF 10(3).” 10
- (18) In the definition of **specified dividends**, paragraph (c) is repealed.
- (19) After the definition of **taxable income**, the following is inserted: 15
“**taxable Maori authority distribution** means a distribution to which a Maori authority credit has been attached or is treated as being attached under **section NF 8A**”.
- (20) The definition of **terminal tax date** is replaced by: 20
“**terminal tax date**, in relation to a person and an income year, means the date determined under **section MC 1** for the payment of terminal tax for the income year, and if the person does not have terminal tax for the income year, **section MC 1** applies as if the person does have terminal tax for the income year”. 25
- (21) **Subsections (2) to (6), (12), (13), (16), (17)(a) and (19)** apply to the 2004–05 income year.
- (22) **Subsections (11) and (18)** apply on the first day of the 2004–05 income year. 30
- (23) **Subsections (7), (9) and (14)** apply on and after 1 April 2003.
- (24) **Subsection (8)** applies on the date this Act receives the Royal assent.
- (25) **Subsections (10), (15) and (20)** apply to the 2002–03 and subsequent income years. 35
- (26) **Subsection (17)(b)** applies to the 1995–96 and subsequent income years.

- (27) Despite **subsection (26)**, **subsection (17)(b)** does not apply if a taxpayer has filed a return of income on or before 14 May 2002 applying **paragraph (ka)** of the definition of **residual income tax** in section OB 1 of the Income Tax Act 1994, as it was before the enactment of **section 65(17)(b)** of the **Taxation (Annual Rates, Maori Organisations, Taxpayer Compliance and Miscellaneous Provisions) Act 2002**. 5
- (28) If **subsection (27)** applies, **subsection (17)(b)** applies to the earlier of—
- (a) the income year following the income year to which the return of income relates and subsequent income years; 10
 - or
 - (b) the 2002–03 and subsequent income years.
- 66 New section OB 3A inserted**
- (1) After section OB 3, the following is inserted: 15
- “OB 3A Extended application of charitable purpose definition**
- “(1) The definition of charitable purpose applies in respect of a marae if—**
- “(a) the marae is situated on a Maori reservation referred to in Te Ture Whenua Maori Act 1993 (Maori Land Act 1993); and 20**
 - “(b) the marae’s funds are solely used to administer and maintain the marae’s physical structure.**
- “(2) A trust, society or institution that otherwise satisfies the public benefit requirement in relation to the definition of charitable purpose is treated as still satisfying the requirement if its members are related by blood.” 25**
- (2) In **subsection (1)**, new **section OB 3A(1)** applies to the 2004–05 and subsequent income years.
- (3) In **subsection (1)**, new **section OB 3A(2)** applies to the 2003–04 and subsequent income years. 30
- 67 References to particular regimes in former Act, etc**
- (1) In section OZ 1(1), after the definition of **life insurance rules**, the following is inserted:
- “Maori authority rules means— 35**
- “(a) Parts HI and MK, and Schedule 1, Part A, clause 2 of this Act; and**

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- “(b) **sections 31, 57, 68B, 69A, 70A, 97A, 140CA, 140DA, 182 and 183A** of the Tax Administration Act 1994”.
- (2) In section OZ 1(1), in the definition of **PAYE rules**, “, **NBA**” is inserted after “**IC**”.
- (3) In section OZ 1(1), in the definition of **provisional tax rules**, “**MB 12**, and **MC 1**” is replaced by “and **MB 12**”. 5
- (4) In section OZ 1(1), in the definition of **trust rules**, “, **HK 14**,” is omitted.
- (5) In section OZ 1(3)(g), “**HI 2 to HI 5**,” and “, **HK 14**,” are omitted. 10
- (6) **Subsections (1), (4) and (5)** apply to the 2004–05 and subsequent income years.
- (7) **Subsection (2)** applies on and after 1 April 2003.
- (8) **Subsection (3)** applies to the 2002–03 and subsequent income years. 15
- 68 Schedule 1—Basic rates of income tax and specified superannuation contribution withholding tax**
- (1) This section amends Schedule 1, Part A.
- (2) In clause 2, “**25**” is replaced by “**19.5**”.
- (3) Clause 3 is repealed. 20
- (4) In clause 4, “**3, 7, or 8**” is replaced by “**7 or 8**”.
- (5) In clause 5, “, **2 or 3**” is replaced by “or **2**”.
- (6) **Subsections (2), (4) and (5)** apply to the 2004–05 and subsequent income years.
- (7) **Subsection (3)** applies on the first day of the 2004–05 income year. 25
- 69 Schedule 13—Months for payment of provisional tax and terminal tax**
- (1) This section amends Schedule 13, Part A.
- (2) In clause 1, “sections **MC 1** and **MC 2**” is replaced by “**section MC 1**”. 30
- (3) In Schedule 13, Part A, clause 2 is replaced by:

- “2. In clause 1, **balance date**, in relation to provisional tax or terminal tax payable by a person for an income year or for another period, means the person’s annual balance date for their accounts for the income year or the other period for which the person must furnish a return of income under the Tax Administration Act 1994. A person is treated as having a balance date that falls in March if—
- “(a) the person does not furnish a return of income under section 38 of the Tax Administration Act 1994; or
- “(b) the person is a non-resident company that does not have a fixed establishment in New Zealand.”
- (4) **Subsections (2) and (3)** apply to the 2002–03 and subsequent income years.
- 70 Schedule 14—Rate of resident withholding tax deductions**
- (1) In Schedule 14, clause 1A, “or a Maori authority” is inserted after “trustee”.
- (2) After Schedule 14, clause 2, the following is added:
- “3. For the purpose of **section NF 2**, the rate of resident withholding tax deduction from payments of resident withholding income, being a distribution to which **section HI 3** applies from a Maori authority, for every \$1 of those payments, is 19.5 cents.”
- (3) **Subsections (1) and (2)** apply to the 2004–05 and subsequent income years.

Part 3

Amendments to Tax Administration Act 1994

- 71 Tax Administration Act 1994** 30
This Part amends the Tax Administration Act 1994².
² 1994, No 166
- 72 Interpretation**
- (1) This section amends section 3(1).
- (2) The definition of **acceptable interpretation** is repealed.

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- (3) The definition of **arrangement** is replaced by:
“**arrangement**—
“(a) means a contract, agreement, plan or understanding, whether enforceable or unenforceable, including all steps and transactions by which it is carried into effect: 5
“(b) for the purpose of Part VA, includes facts that the Commissioner considers are material or relevant as background or context to a private or a product ruling”.
- (4) In the definition of **civil penalty**, after paragraph (c), the following is inserted: 10
“(ca) a promoter penalty; or”.
- (5) In the definition of **deferrable tax**—
(a) “50% of” is omitted:
(b) “; and **non-deferrable tax**, for the purposes of either Part, means the other 50% of that tax” is omitted. 15
- (6) The definition of **Maori** is repealed.
- (7) In the definition of **tax position**, “with regard to tax possible under” is replaced by “involving an interpretation of”.
- (8) **Subsection (2)** applies on 1 April 2003.
- (9) **Subsections (3) to (5) and (7)** apply on and after 1 April 2003. 20
- (10) **Subsection (6)** applies on the first day of the 2004–05 income year.
- 73 Commissioner to have power to inspect books and documents**
- (1) In section 16, the section heading is replaced by: 25
“**Commissioner may access premises to obtain information**”.
- (2) Section 16(2) is replaced by:
“(2) The occupier of a building or place entered or proposed to be entered by the Commissioner, or by an authorised officer, must— 30
“(a) provide the Commissioner or the officer with all reasonable facilities and assistance for the effective exercise of powers under this section; and
“(b) answer all proper questions relating to the effective exercise of powers under this section, orally or, if 35

required by the Commissioner or the officer, in writing,
or by statutory declaration.

- “(2A) A person whom the Commissioner or an authorised officer considers necessary for the effective exercise of powers under this section may accompany the Commissioner or the authorised officer to a place.” 5
- (3) In section 16(3), “or an authorised officer” is replaced by “, an authorised officer, or a person accompanying the Commissioner or the authorised officer,”.
- (4) In section 16(4), “authorised officer named in the application” is replaced by “the authorised officer”. 10
- (5) Section 16(5)(b) is replaced by:
 “(b) shall specify an authorised officer of the Department, whether by name or in general, who may act under the warrant; and 15
 “(ba) shall specify whether other persons may accompany the officer acting under the warrant; and”.
- (6) **Subsections (1) to (4)** apply on and after the date this Act receives the Royal assent.
- (7) **Subsection (5)** applies to warrants issued on and after the day this Act receives the Royal assent. 20

74 New section 16A inserted

- (1) After section 16, the following is inserted:
 “16A Power to remove and copy documents
 “(1) The Commissioner, or an officer of the Department authorised by the Commissioner, may remove books or documents accessed under **section 16** to make copies. 25
 “(2) Books or documents removed must be returned as soon as practicable after copies have been made.
 “(3) A copy of a book or document certified by or on behalf of the Commissioner is admissible in evidence in court as if it were the original.” 30
- (2) **Subsection (1)** applies on and after the date this Act receives the Royal assent.

75 Information to be furnished on request of Commissioner 35

- (1) After section 17(1), the following is inserted:

- “(1A) For the purpose of subsection (1), books or documents held by a non-resident that is controlled, directly or indirectly, by a New Zealand resident, is treated as being held by the New Zealand resident.
- “(1B) For the purpose of **subsection (1A)**— 5
- “(a) in determining whether a non-resident is controlled by a New Zealand resident, anything held by persons associated with the New Zealand resident is treated as being held by the New Zealand resident; and
- “(b) a law of a foreign country that relates to the secrecy of information must be ignored. 10
- “(1C) If information in writing is required, or books and documents must be produced, the Commissioner may require that the information be furnished, or the books and documents be produced, to a particular office of the Department.” 15
- (2) **Subsection (1)** applies to a request made by the Commissioner on or after the date this Act receives the Royal assent.
- 76 Records to be kept by employer**
- (1) In section 24, in the section heading “**or PAYE intermediary**” is inserted after “**employer**”. 20
- (2) After section 24(1), the following is inserted:
- “(1A) If an employer has entered into an arrangement with a PAYE intermediary, the PAYE intermediary must keep all records that an employer would be required to keep and despite subsection (1), the employer need not keep a record of the amount of any tax deduction made from a source deduction payment.” 25
- (3) In section 24(2), “or PAYE intermediary” is inserted after “Every employer”.
- (4) In section 24(2), including the proviso, “or the PAYE intermediary” is inserted after “the employer” in each place where it occurs. 30
- (5) **Subsections (1) to (4)** apply on and after 1 April 2003.
- 77 Section 31 replaced**
- (1) Section 31 is replaced by:

- “31 Maori authority to give notice of amounts distributed**
- “(1) A Maori authority that makes a taxable Maori authority distribution to a member must, at the time the distribution is made, give to the member a notice that contains the following details: 5
- “(a) the name of the Maori authority;
- “(b) the date the distribution is made;
- “(c) the name and address of the member to whom the distribution is made;
- “(d) the amount of the distribution made to the member, including what portion is a taxable distribution and what portion is a non-taxable distribution: 10
- “(e) the amount of a Maori authority credit attached to the distribution or treated as being attached to the distribution under **section NF 8A**: 15
- “(f) such other information as the Commissioner may require.
- “(2) A notice is treated as having been given to a member if the notice is— 20
- “(a) given to the member personally; or
- “(b) is sent by post to the member’s usual or last known place of abode or business; or
- “(c) is given personally to a person authorised to act on behalf of the member; or
- “(d) is sent by post to the person at their last known place of abode or business.” 25
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- 78 Annual returns of income by taxpayers**
- (1) In section 33, in the section heading, “**by taxpayers**” is omitted. 30
- (2) After section 33(1), the following is inserted:
- “(1A) In an income year, a trust, society or institution to which section CB 4(1)(c) or section CB 4(1)(e) of the Income Tax Act 1994 applies, may furnish to the Commissioner a return of income in the prescribed form for the preceding income year, together with such other particulars as may be prescribed if 35

the trust, society or institution receives a taxable Maori authority distribution.”

- (3) After section 33(2), the following is added:
“(3) Subsection (2) does not apply if **subsection (1A)** applies.”
- (4) **Subsections (1) to (3)** apply to the 2004–05 and subsequent income years. 5

79 Annual returns of income not required

- (1) After section 33A(1)(b)(via), the following is inserted:
“(vib) taxable Maori authority distributions if the person’s annual gross income is more than \$38,000; and”.
- (2) In section 33A(1)(b)(vii) and 33A(1)(b)(viii), “interest or dividends” is replaced by “interest, dividends, or taxable Maori authority distributions”.
- (3) **Subsections (1) and (2)** apply to the 2004–05 and subsequent income years. 10 15

80 Electronic format of employer monthly schedule and remittance certificate

- (1) In section 36A(1), “or a PAYE intermediary” is inserted after “an employer” in the second place where it occurs. 20
- (2) In section 36A(3), “or to a class of employer” is replaced by “, a class of employers, a PAYE intermediary, or a class of PAYE intermediaries”.
- (3) **Subsections (1) and (2)** apply on and after 1 April 2003.

81 New section 36BA inserted 25

- (1) After section 36B, the following is inserted:
“36BA Electronic format for details required under Part MBA of Income Tax Act 1994
The Commissioner may prescribe one or more electronic formats in which details that must be provided under **Part MBA** of the Income Tax Act 1994 may be provided by electronic means.” 30
- (2) **Subsection (1)** applies to the 2003–04 and subsequent income years.

- 82 Particulars furnished in electronic format**
- (1) In section 36C(1), “or 36B” is replaced by “36B or **36BA**”.
- (2) **Subsection (1)** applies to the 2003–04 and subsequent income years.
- 83 Consequential adjustments on change in return date** 5
- (1) In section 39(4), “any year or years of assessment, make all such assessments” is replaced by “an income year, make an assessment”.
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years. 10
- 84 Returns by person claiming housekeeper or charitable rebates**
- (1) In section 41A(8), “, HK 14,” is omitted.
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years. 15
- 85 Special arrangements for supply of information by employer to Commissioner**
- (1) In section 48, in the section heading, “or PAYE intermediary” is inserted after “employer”.
- (2) In section 48(1), “or a PAYE intermediary” is inserted after “an employer”. 20
- (3) **Subsections (1)** and **(2)** apply on and after 1 April 2003.
- 86 Section 57 replaced**
- (1) Section 57 is replaced by:
- “57 **Maori authority to make returns of income** 25
- “(1) Every year a Maori authority must furnish a return in the prescribed form that is a complete statement of the Maori authority’s taxable income for the preceding year.
- “(2) The return must be furnished to the Commissioner on or before the date by which returns of income are required under this Act.” 30
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.

- 87 New section 68B inserted**
- (1) After section 68A, the following is inserted:
- “68B Maori authority distribution statement required when Maori authority makes distribution**
- “(1) A Maori authority that makes a distribution to a member must, at the time it makes the distribution, complete and retain a Maori authority distribution statement that contains the following: 5
- “(a) the date on which the distribution is made: 10
- “(b) the total amount of distributions made: 10
- “(c) the total amount of Maori authority credits attached to the distributions (to be shown as a nil amount if Maori authority credits are not attached):
- “(d) the base ratio of the distribution: 15
- “(e) such further information as the Commissioner may require. 15
- “(2) A Maori authority must, no later than the time allowed by section 37 for furnishing a return of income for an income year, furnish to the Commissioner the statement for the imputation year that corresponds with the income year.” 20
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- 88 New section 69A inserted**
- (1) After section 69, the following is inserted:
- “69A Annual Maori authority credit account return required by Maori authority** 25
- “(1) A Maori authority must, no later than the time allowed by section 37 for furnishing a return of income for an income year, furnish to the Commissioner an annual Maori authority credit account return in the prescribed form for the imputation year that corresponds with the income year. 30
- “(2) The annual Maori authority credit account return must show—
- “(a) the opening and closing balances of the Maori authority credit account for the imputation year: 35
- “(b) the amount and sources of all credits and debits that have arisen during the imputation year in accordance with **sections MK 4** and **MK 5** of the Income Tax Act 1994:

“(c) the amount of any further income tax payable for the imputation year under section MK 8 of the Income Tax Act 1994:		
“(d) the amount of any Maori authority distribution penalty tax payable for the imputation year:	5	
“(e) such further information as the Commissioner may prescribe or require.		
“(3) A Maori authority must, for an imputation year in which either of the ratios specified in subsection (4) has increased or decreased by more than 20% from the equivalent ratio for the preceding imputation year—	10	
“(a) disclose the fact in the annual Maori authority credit account return for the imputation year; and		
“(b) explain the reasons for the change.		
“(4) The ratios are:	15	
“(a) <u>Maori authority credits</u> taxable Maori authority distributions where—		
Maori authority credits	is the total amount of Maori authority credits attached to taxable Maori authority distributions made by the Maori authority during the imputation year:	20
taxable Maori authority distributions	is the total amount of taxable Maori authority distributions made by the Maori authority during the imputation year:	25
“(b) <u>debits</u> <u>credits</u> where—		30
debits	is the total amount of debits arising to the Maori authority’s Maori authority credit account during the imputation year:	35

- credits is the total amount of credits arising to the Maori authority's Maori authority credit account during the imputation year." 5
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- 89 New section 70A inserted**
- (1) After section 70, the following is inserted:
- “70A Annual Maori authority credit account return to be furnished in particular cases 10**
- “(1) The Commissioner may require a Maori authority to furnish, within the time allowed by the Commissioner, a Maori authority credit account return for a period specified by the Commissioner. 15
- “(2) A Maori authority that ceases to be a Maori authority in an imputation year must furnish to the Commissioner, no later than 2 calendar months after the last day on which it is still a Maori authority, a Maori authority credit account return for the period beginning on the first day of the imputation year and ending on the last day on which the Maori authority is a Maori authority. 20
- “(3) A Maori authority may furnish to the Commissioner, at any time, a Maori authority credit account return for a period beginning on the first day of an imputation year and ending on a day specified by the Maori authority within the imputation year, being a day that is not more than 7 days earlier than the date on which the Maori authority credit account return is furnished to the Commissioner. 25
- “(4) A Maori authority credit account return furnished under this section must, except if the Commissioner otherwise specifies, contain the matters referred to in **section 69A** as if the references in that section to an imputation year were— 30
- “(a) in the case of a return required to be furnished under **subsection (1)**, references to the period specified by the Commissioner; and 35

- “(b) in the case of a return required to be furnished under **subsection (2)** or **subsection (3)**, references to the period referred to in **subsection (2)** or **subsection (3)** respectively.”
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years. 5
- 90 Notification required that taxpayer not subject to this Part**
- (1) Section 80B(2) and 80B(3) is replaced by:
- “(2) The information required must be received by the Commissioner no later than the person’s terminal tax date for the income year to which the income statement relates.” 10
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.
- 91 Natural person to request income statement**
- (1) Section 80C(2) and 80C(3) is replaced by: 15
- “(2) The request must be received by the Commissioner no later than the person’s terminal tax date for the income year to which the income statement relates.”
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years. 20
- 92 Taxpayer obligations and assessment on receipt of income statement**
- (1) In section 80F(1), “or (3)” is omitted.
- (2) Section 80F(2) and 80F(3) is replaced by:
- “(2) A person must inform the Commissioner by the later of— 25
- “(a) the person’s terminal tax date for the income year to which the income statement relates; and
- “(b) the date that occurs 2 months after the date the income statement is issued.”
- (3) **Subsections (1)** and **(2)** apply to the 2002–03 and subsequent income years. 30
- 93 Income statement deemed assessment**
- (1) Section 80H(3)(a) and 80H(3)(ab) is repealed.
- (2) Section 80H(4) and 80H(5) is replaced by:

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- “(4) An assessment under subsection (1) is treated as being made on the date that is 2 months after the date an income statement is issued if the income statement is issued not more than 2 months before the person’s terminal tax date.”
- (3) In section 80H(6), “or the date their income tax is payable under section NC 17(3)” is omitted. 5
- (4) **Subsection (1)** applies on the first day of the 2002–03 income year.
- (5) **Subsections (2)** and **(3)** apply to the 2002–03 and subsequent income years. 10
- 94 New section 97A inserted**
- (1) After section 97, the following is inserted:
- “97A **Assessment of Maori authority distribution penalty tax**
- “(1) The Commissioner may, in respect of a Maori authority chargeable with Maori authority distribution penalty tax, make an assessment of the amount of Maori authority distribution penalty tax that the Commissioner considers should be imposed on the Maori authority. 15
- “(2) The Maori authority is liable to pay the Maori authority distribution penalty tax assessed except to the extent that the Maori authority establishes in proceedings challenging the assessment that the assessment is excessive or that the Maori authority is not chargeable with the Maori authority distribution penalty tax. 20
- “(3) Sections 109, 111 and 113 apply to an assessment made under this section as if— 25
- “(a) the references to ‘taxpayer’ in those sections included a Maori authority chargeable with Maori authority distribution penalty tax; and
- “(b) the reference to ‘tax already assessed’ in section 113 included Maori authority distribution penalty tax already assessed under this section. 30
- “(4) An assessment made under this section is subject to challenge in the same manner as an assessment of income tax imposed under section BB 1 of the Income Tax Act 1994, and Part VII of this Act applies accordingly.” 35
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.

95 Definitions

- (1) This section amends section 120C(1).
- (2) In the definition of **date interest starts**, at the end of paragraph (d), “filed.” is replaced by “filed; and”, and the following is inserted: 5
- “(e) for tax paid, being a deposit to a tax pooling account in accordance with **Part MBA** of the Income Tax Act 1994, means the date on which the deposit is made, unless the Commissioner refunds the deposit as required by **section MBA 5(2)**, in which case there is not a date on which interest starts”. 10
- (3) The definition of **tax paid** is replaced by:
- “tax paid means—**
- “(a) at any time, the amount of tax— 15
- “(i) paid or credited by that time in respect of a tax liability; and
- “(ii) that has not been refunded or applied by the Commissioner in meeting another tax liability:
- “(b) an amount credited to an intermediary’s tax pooling account in accordance with **Part MBA** of the Income Tax Act 1994: 20
- “(c) an amount credited or transferred to a taxpayer’s account from a tax pooling account in accordance with **Part MBA** of the Income Tax Act 1994”.
- (4) In section 120C(3), “paragraph (a)” is replaced by “**paragraph (a)(i)**”. 25
- (5) **Subsections (2) to (4)** apply to the 2003–04 and subsequent income years.

96 New sections 120OA and 120OB inserted

- (1) After section 120O, the following is inserted: 30
- “120OA Variation to definitions for determining interest chargeable or payable to PAYE intermediaries**
- “(1) Despite section 120C, this section sets out the definitions that apply for the purpose of determining interest chargeable or payable to a PAYE intermediary, in their capacity as an intermediary, if an employer who has entered into an arrangement with the intermediary has— 35
- “(a) paid gross salary or wages to the intermediary; and

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- “(b) provided the information required by the intermediary.
- “(2) In this Part—
- “**Commissioner’s paying rate** means the rate of interest established and notified as the Commissioner’s paying rate by an Order in Council made under section 120H 5
- “**date interest starts**—
- “(a) for unpaid tax means—
- “(i) if a PAYE intermediary pays too little tax by a due date—
- “(A) the day after the due date for payment of the tax; or 10
- “(B) where the due date is a new due date, the day after the original due date for payment of the tax:
- “(ii) if the Commissioner refunds tax which should be kept and taken into account in satisfying tax payable by a PAYE intermediary on a due date, the day after the day the Commissioner refunds the tax; and 15
- “(b) for overpaid tax, if a PAYE intermediary pays too much tax by or after a due date— 20
- “(i) the day after the later of the due date for payment of the tax and the date the payment is made; or
- “(ii) where the due date is a new due date, the day after the later of the original due date for payment of the tax and the date on which the payment is made 25
- “**interest paid to a taxpayer** means interest credited to the PAYE intermediary; and **interest paid** and **paid** have corresponding meanings 30
- “**interest period**—
- “(a) for unpaid tax, means the period beginning on the date interest starts and ending on the date the tax is paid or credited as paid (both dates inclusive):
- “(b) for overpaid tax, means the period beginning on the date interest starts and ending on the date the tax is refunded by the Commissioner (both dates inclusive); and 35
- “**tax paid**, at any time, means the amount of tax—

- “(a) paid or credited as paid by that time in respect of a deduction of tax that must be made under a tax law; and
“(b) that has not been refunded by the Commissioner
“**tax payable**, at any time, means a deduction of tax that must be made under a tax law and paid to the Commissioner 5
“**taxpayer’s paying rate** means the rate of interest established and notified as the taxpayer’s paying rate by an Order in Council made under section 120H.
- “(3) For the purposes of this Part, where, at any time,—
“(a) the tax paid by a PAYE intermediary exceeds the tax payable, the excess is overpaid tax; and 10
“(b) the tax payable by a PAYE intermediary exceeds the tax paid, the excess is unpaid tax.
- “1200B **Application of sections 120A, 120AA and 120D to 120I to PAYE intermediaries** 15
- “(1) Sections 120A, 120AA and 120D to 120I apply to a PAYE intermediary in their capacity as a PAYE intermediary as if references to a ‘taxpayer’ were read as references to a ‘PAYE intermediary’.
- “(2) Despite **subsection (1), sections 120EA, 120F(2) and 120F(3)** do not apply to a PAYE intermediary.” 20
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 97 New section 1200C inserted**
- (1) After **section 1200B**, as inserted by **section 96**, the following is inserted: 25
- “1200C **Application of sections 120A, 120AA and 120C to 120I to intermediaries who operate tax pooling accounts**
- “(1) Sections 120A, 120AA and 120C to 120I apply to an intermediary who operates a tax pooling account in accordance with **Part MBA** of the Income Tax Act 1994 in their capacity as an intermediary as if references to a ‘taxpayer’ were read as references to an ‘intermediary’. 30
- “(2) Despite **subsection (1), sections 120EA, 120F(2) and 120F(3)** do not apply to an intermediary.”
- (2) **Subsection (1)** applies to the 2003–04 and subsequent income years. 35

- 98 Interest on deferrable tax**
- (1) Section 120T(2) is repealed.
 - (2) **Subsection (1)** applies on 1 April 2003.
- 99 Certain rights of objection not conferred** 5
- (1) In section 125(j)(i), “(except section NC 17)” is omitted.
 - (2) In section 125(j)(iv), “128A,” is omitted.
 - (3) **Subsection (1)** applies to the 2002–03 and subsequent income years.
 - (4) **Subsection (2)** applies on and after 1 April 2003.
- 100 Obligation to pay tax where competent objection lodged** 10
- (1) Section 128(1) is replaced by:
“(1) The Commissioner may require a taxpayer to pay all tax in dispute if the Commissioner considers that there is a risk to the revenue if the tax in dispute is not paid.”
 - (2) Section 128(3)(a) and 128(3)(b) is replaced by: 15
“(a) the tax in dispute paid in accordance with **subsection (1)**;
and
“(b) interest accrued on the tax in dispute under Part VII.”
 - (3) In section 128(5), “and non-deferrable” is omitted.
 - (4) In section 128(6), “or non-deferrable” is omitted. 20
 - (5) **Subsections (1) to (4)** apply on and after 1 April 2003.
- 101 Section 128A repealed**
- (1) Section 128A is repealed.
 - (2) **Subsection (1)** applies on 1 April 2003.
- 102 Certain rights of challenge not conferred** 25
- (1) In section 138E(1)(e)(i), “(except section NC 17)” is omitted.
 - (2) In section 138E(1)(e)(iv), “128A,” is omitted.
 - (3) **Subsection (1)** applies to the 2002–03 and subsequent income years.
 - (4) **Subsection (2)** applies on and after 1 April 2003. 30
- 103 Obligation to pay tax during challenge**
- (1) Section 138I(1) and 138I(3) is repealed.

- (2) In section 138I(4), “and non-deferrable” is omitted.
- (3) In section 138I(5), “or non-deferrable” is omitted.
- (4) **Subsection (1)** applies on 1 April 2003.
- (5) **Subsections (2)** and **(3)** apply on and after 1 April 2003.
- 104 Section 138J repealed** 5
- (1) Section 138J is repealed.
- (2) **Subsection (1)** applies on 1 April 2003.
- 105 Powers of hearing authority**
- (1) After section 138P(1), the following is inserted:
- “(1A) If a taxpayer brings a challenge and proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, a hearing authority must reduce the taxpayer’s assessment by the specific amount.” 10
- (2) In section 138P(5)(a), “or **subsection (1A)**” is inserted after “subsection (1)(a)”. 15
- (3) **Subsections (1)** and **(2)** apply to challenges brought on or after the date this Act receives the Royal assent.
- 106 Non-electronic filing penalty**
- (1) Section 139AA(1) is replaced by:
- “(1) This section applies to— 20
- “(a) an employer who must comply, in a prescribed electronic format, with section NC 15(1)(a) and NC 15(1)(b) of the Income Tax Act 1994; and
- “(b) a PAYE intermediary.”
- (2) In section 139AA(2)— 25
- (a) “or a PAYE intermediary” is inserted after “An employer”;
- (b) “or the PAYE intermediary” is inserted after “if the employer”.
- (3) **Subsections (1)** and **(2)** apply on and after 1 April 2003. 30
- 107 New section 140CA inserted**
- (1) After section 140C, the following is inserted:

- “140CA Maori authority distribution penalty tax payable where end of year debit balance**
- “(1) A Maori authority that is liable to pay further income tax under **section MK 8** of the Income Tax Act 1994 for an end of year debit balance is also liable to pay a special tax known as Maori authority distribution penalty tax. 5
- “(2) The amount of the Maori authority distribution penalty tax is 10% of the amount of further income tax that gives rise to the liability for the Maori authority distribution penalty tax.”
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years. 10
- 108 New section 140DA inserted**
- (1) After section 140D, the following is inserted:
- “140DA Application of other provisions of Act to Maori authority distribution penalty tax** 15
- “(1) Subject to the Maori authority rules, the other provisions of this Act and the Income Tax Act 1994, so far as they apply and with any necessary modifications, apply to Maori authority distribution penalty tax as if it were income tax imposed under section BB 1 of the Income Tax Act 1994. 20
- “(2) Despite **subsection (1)**, Maori authority distribution penalty tax is not included within the meaning of **income tax** or **tax** for the purpose of—
- “(a) **Parts HI** or **MK** of the Income Tax Act 1994; or 25
- “(b) calculating a taxpayer’s residual income tax liability for the purpose of section 120K of this Act.”
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- 109 Tax shortfalls**
- (1) In section 141(12A), “141E” is replaced by “**141EA**”. 30
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 110 Not taking reasonable care**
- (1) In section 141A(2), “20%” is replaced by “10%”.
- (2) After section 141A(2), the following is inserted:

- “(2A) Despite subsection (2), the penalty payable for not taking reasonable care is 20% of the resulting tax shortfall if—
- “(a) a taxpayer has previously been liable to pay a shortfall penalty for not taking reasonable care in respect of a particular tax type as a result of a tax audit or investigation; and 5
 - “(b) within 4 years after the date on which the penalty was imposed, the taxpayer takes a tax position that results in a liability to pay a shortfall penalty for not taking reasonable care in respect of the same tax type. 10
- “(2B) For the purpose of **subsection (2A)(b)**, the shortfall penalty may be imposed after the end of the 4 year period.”
- (3) In section 141A(3), “, in taking a taxpayer’s tax position, has used an acceptable interpretation of the tax law” is replaced by “takes an acceptable tax position”. 15
- (4) **Subsections (1) to (3)** apply on and after 1 April 2003.
- 111 Unacceptable interpretation**
- (1) In section 141B, the section heading is replaced by: “**Unacceptable tax position**”. 20
- (2) Section 141B(1) is replaced by:
- “(1) A taxpayer takes an unacceptable tax position if, viewed objectively, the tax position fails to meet the standard of being about as likely as not to be correct.”
- (3) Section 141B(2) is replaced by:
- “(2) A taxpayer is liable to pay a shortfall penalty if the taxpayer takes an unacceptable tax position and the tax shortfall arising from the taxpayer’s tax position is more than both— 25
- “(a) \$20,000; and
 - “(b) the lesser of \$250,000 and 1% of the taxpayer’s total tax figure for the relevant return period.” 30
- (4) In section 141B(4), “20%” is replaced by “10%”.
- (5) After section 141B(4), the following is inserted:
- “(4A) Despite subsection (4), the penalty payable for an unacceptable tax position is 20% of the resulting tax shortfall if— 35
- “(a) a taxpayer has previously been liable to pay a shortfall penalty for an unacceptable tax position in respect of a

- particular tax type as a result of a tax audit or investigation; and
- “(b) within 4 years after the date on which the penalty was imposed, the taxpayer takes a tax position that results in a liability to pay a shortfall penalty for an unacceptable tax position in respect of the same tax type. 5
- “(4B) For the purpose of **subsection (4A)(b)**, the shortfall penalty may be imposed after the end of the 4 year period.”
- (6) In section 141B(7), the portion before paragraph (a) is replaced by: 10
- “(7) The matters that must be considered in determining whether the taxpayer has taken an unacceptable tax position include—”.
- (7) **Subsections (1), (2), (4) and (6)** apply on and after 1 April 2003.
- (8) **Subsections (3) and (5)** apply to shortfall penalties imposed on tax obligations that arise on or after 1 April 2003. 15
- 112 Gross carelessness**
- (1) In section 141C(4), “, in taking a taxpayer’s tax position, has used an acceptable interpretation of tax law” is replaced by “takes an acceptable tax position”. 20
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 113 Abusive tax position**
- (1) In section 141D(1), “having applied an unacceptable interpretation to a tax law” is replaced by “having taken an unacceptable tax position”. 25
- (2) After section 141D(3), the following is inserted:
- “(3A) The penalty payable for taking an abusive tax position is reduced to 20% of the resulting tax shortfall if—
- “(a) the taxpayer invests in an arrangement to which **section 141EA** applies and becomes liable to a shortfall penalty for an abusive tax position as a result of that investment, irrespective of whether a promoter penalty has been imposed in respect of the arrangement; and 30
- “(b) the taxpayer’s investment in the arrangement is less than \$50,000; and 35

- “(c) the taxpayer has independent advice stating that the taxpayer’s tax position is not an abusive tax position.”
- (3) Section 141D(4) is replaced by:
- “(4) This section applies to a taxpayer if the taxpayer has taken an unacceptable tax position and the tax shortfall from the tax position is more than \$20,000.” 5
- (4) Section 141D(7)(a) is replaced by:
- “(a) is an unacceptable tax position at the time at which the tax position is taken; and”.
- (5) **Subsections (1) and (4)** apply on and after 1 April 2003. 10
- (6) **Subsection (2)** applies on and after the date this Act receives the Royal assent.
- (7) **Subsection (3)** applies to shortfall penalties imposed on tax obligations that arise on and after 1 April 2003.
- 114 New sections 141EA and 141EB inserted** 15
- (1) After section 141E, the following is inserted:
- “141EA Promoter penalties**
- “(1) The promoter of an arrangement is liable to a promoter penalty if—
- “(a) a taxpayer invests in the arrangement and a shortfall penalty for an abusive tax position is imposed on the taxpayer as a result of the investment; and 20
- “(b) the arrangement is offered, sold, issued or promoted to 5 or more persons in an income year.
- “(2) For the purpose of **subsection (1)(b)**, an arrangement is treated as being offered, sold, issued or promoted to 5 or more persons if 25
- “(a) are allowed a deduction as a result of the arrangement; or
- “(b) may offset a net loss generated as a result of the arrangement against their net income. 30
- “(3) An arrangement is treated as being offered, sold, issued or promoted to all shareholders of a loss attributing qualifying company and partners of a partnership if the arrangement is offered, sold, issued or promoted to the loss attributing qualifying company or partnership respectively. 35

- “(4) For the purpose of determining the amount of the promoter penalty, the promoter is treated as having a tax shortfall equal to the total of all tax shortfalls generated by the arrangement, determined using the basic rate of income tax of 39%.
- “(5) The amount of the promoter penalty is 100% of the tax shortfall the promoter is treated as having under **subsection (4)**. 5
- “(6) If there is more than one promoter of an arrangement, all promoters are jointly and severally liable for the promoter penalty, unless the promoter is a person who only satisfies **section 141EB(1)(b)** of the definition, in which case the promoter’s liability is limited to the portion of the promoter penalty that relates to the taxpayers to whom they have promoted the arrangement. 10
- “141EB Definition of promoter**
- “(1) In section 141EA, **promoter** means— 15
- “(a) a person who is a party to, or is involved in formulating, a plan or programme from which an arrangement is offered; or
- “(b) a person who sells, issues, or promotes the selling or issuing of, an arrangement, whether or not for remuneration. 20
- “(2) For the purpose of **subsection (1)**, a **promoter** does not include a person who only provides legal, accounting, clerical or secretarial services to a promoter.”
- (2) **Subsection (1)** applies to arrangements entered into on and after the date this Act receives the Royal assent. 25
- 115 Reduction in penalty for voluntary disclosure of tax shortfall**
- (1) In section 141G(1), “141E” is replaced by “**141EA**”.
- (2) **Subsection (1)** applies on and after 1 April 2003. 30
- 116 Reduction for disclosure of unacceptable interpretation**
- (1) In the section heading to section 141H, “**interpretation**” is replaced by “**tax position**”.
- (2) **Subsection (1)** applies on and after 1 April 2003.

- 117 Reduction where temporary shortfall**
- (1) In section 141I(1), “141E” is replaced by “**141EA**”.
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 118 New section 141JAA inserted**
- (1) After section 141J, the following is inserted: 5
- “141JAA **Shortfall penalty for not taking reasonable care not to be more than \$50,000**
- “(1) Despite section 141J, a shortfall penalty payable by a taxpayer for not taking reasonable care may not be more than \$50,000 if— 10
- “(a) the taxpayer voluntarily discloses the shortfall no later than 2 months after the date on which the return to which the shortfall relates is filed; or
- “(b) the Commissioner determines the shortfall within 2 months after the date on which the return to which the shortfall relates is filed. 15
- “(2) This section does not apply if section 141K applies.”
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 119 New section 141JB inserted**
- (1) After section 141JA, the following is inserted: 20
- “141JB **Application of Part IX to PAYE intermediaries**
- “(1) The provisions relating to the late filing penalty, the late payment penalty and shortfall penalties apply to a PAYE intermediary in respect of the intermediary’s application of the PAYE rules as if the intermediary, in their capacity as a PAYE intermediary, were a taxpayer to whom those provisions applied, if an employer has— 25
- “(a) paid gross salary or wages to the intermediary by the date specified by the intermediary; and
- “(b) provided the information required by the intermediary within the time agreed by both the employer and the intermediary. 30
- “(2) The provisions relating to the late filing penalty, the late payment penalty and shortfall penalties do not apply to a PAYE intermediary but continue to apply to the employer if 35

- an employer has not paid gross salary or wages to the intermediary or has not supplied the information required by the intermediary within the agreed time.”
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 120 Increased penalty for obstruction** 5
- (1) In section 141K(1), “141E” is replaced by “**141EA**”.
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 121 Duty of Commissioner to report on application of penalties**
- (1) In section 141L(1), “141E” is replaced by “**141EA**”. 10
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 122 Due date for payment of late filing penalty**
- (1) Section 142(1)(a) and 142(1)(b) is replaced by:
- “(a) the terminal tax date for the income year to which the annual tax return relates; or” 15
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.
- 123 Recovery of civil penalties**
- (1) After section 156A(3), the following is added:
- “(4) Subsection (3) applies to a PAYE intermediary in their capacity as a PAYE intermediary if **section 141JB(1)** applies, and references to a ‘taxpayer’ are to be read as references to a ‘PAYE intermediary’.” 20
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 124 Deduction of tax from payments due to defaulters** 25
- (1) In section 157(10), in the definition of **income tax**, after paragraph (b) the following is inserted:
- “(ba) amounts paid to an intermediary in accordance with **Part MBA** of the Income Tax Act 1994:”.
- (2) In section 157(10), the definition of **taxpayer** is replaced by: 30
- “**taxpayer**—

- “(a) in relation to income tax within the meaning of paragraphs (b) and (d) of the definition of **income tax** in this subsection, includes an employer and a PAYE intermediary; and
- “(b) in relation to income tax within the meaning of paragraph (e) of the definition of **income tax** in this subsection, includes an employer.” 5
- (3) **Subsection (1)** applies to amounts paid for the 2003–04 and subsequent income years.
- (4) **Subsection (2)** applies on and after 1 April 2003. 10
- 125 Recovery of tax deductions from employers**
- (1) In section 167, in the section heading, “**or PAYE intermediaries**” is inserted after “**employers**”.
- (2) After section 167(2), the following is inserted:
- “(2A) This section applies to— 15
- “(a) a PAYE intermediary in their capacity as an intermediary; and
- “(b) a PAYE intermediary instead of an employer if the employer has paid gross salary or wages and provided the information required by the intermediary within the time agreed by both the employer and the intermediary. 20
- “(2B) For the purpose of applying this section to a PAYE intermediary, a reference to an ‘employer’ is to be read as a reference to a ‘PAYE intermediary’.”
- (3) **Subsections (1) and (2)** apply on and after 1 April 2003. 25
- 126 Employer failing to make tax deductions**
- (1) In section 168, in the section heading, “**or PAYE intermediary**” is inserted after “**Employer**”.
- (2) After section 168(3), the following is added:
- “(4) This section applies to a PAYE intermediary instead of an employer if the employer has paid gross salary or wages and provided the information required by the intermediary within the time agreed by both the employer and the intermediary. 30
- “(5) For the purpose of applying this section to a PAYE intermediary, references to an ‘employer’ are to be read as references to a ‘PAYE intermediary’.” 35

(3) **Subsections (1) and (2)** apply on and after 1 April 2003.

127 Unpaid tax deductions, etc to constitute charge on employer's property

(1) In section 169, in the section heading, “**or PAYE intermediary's**” is inserted after “**employer's**”.

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(2) After section 169(1), the following is added:

“(1A) This section applies to a PAYE intermediary instead of an employer if the employer has—

“(a) paid gross salary or wages to the intermediary; and

“(b) provided the information required by the intermediary within the time agreed by both the employer and the intermediary.

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“(1B) For the purpose of applying this section to a PAYE intermediary, references to an ‘employer’ are to be read as references to a ‘PAYE intermediary’.”

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(3) **Subsections (1) and (2)** apply on and after 1 April 2003.

128 New section 182 inserted

(1) After section 181, the following is inserted:

“**182 Remissions and refunds of Maori authority distribution penalty tax**

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“(1) The Commissioner must remit any Maori authority distribution penalty tax imposed under **section 140CA** to the extent that the Commissioner is satisfied that—

“(a) liability for the penalty tax arose because of a debit arising to the Maori authority credit account under **section MK 5(1)(f)** of the Income Tax Act 1994 in relation to an arrangement to obtain a tax advantage, and it is established subsequently that, in relation to the debit, a credit arises to the Maori authority credit account in accordance with **section MK 4(1)(e)** of the Income Tax Act 1994; or

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“(b) liability for the penalty tax arose because of a refund of a Maori authority distribution having been sent but not having been received by the Maori authority, or not having been known by the Maori authority to have been received, before the end of the imputation year; or

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- “(c) liability for the penalty tax arose because of a debit arising to the Maori authority credit account under **section MK 5(1)(h)** of the Income Tax Act 1994, and the Maori authority did not become aware of the arising of the debit in sufficient time to allow it to remove the debit balance before the end of the year. 5
- “(2) If the Commissioner remits any Maori authority distribution penalty tax under this section, the Commissioner must also remit any late payment penalty imposed under section 139B to the extent that the Commissioner is satisfied that the penalty was imposed in respect of the Maori authority distribution penalty tax so remitted. 10
- “(3) If the Commissioner remits any Maori authority distribution penalty tax under **subsection (1)(a)**, the Commissioner must also remit any late payment penalty imposed under section 139B to the extent that the Commissioner is satisfied that the penalty was imposed in respect of the amount of further income tax that gave rise to the Maori authority distribution penalty tax so remitted.” 15
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years. 20
- 129 Remission for reasonable cause**
- (1) In section 183A(1), “, and a dividend withholding payment penalty tax imposed by section 140C” is replaced by “, a dividend withholding payment penalty tax imposed by section 140C, and a Maori authority distribution penalty tax imposed by **section 140CA**”. 25
- (2) **Subsection (1)** applies to the 2004–05 and subsequent income years.
- 130 Cancellation of interest** 30
- (1) Section 183C(2) is repealed.
- (2) **Subsection (1)** applies on 1 April 2003.
- 131 New section 186 inserted**
- (1) After section 185, the following is added:

- “186 Application of particular provisions in this Part to PAYE intermediaries**
- “(1) Section 183A applies to a PAYE intermediary in their capacity as a PAYE intermediary as if—
- “(a) the reference to a ‘taxpayer’ in subsection (1A) were a reference to a ‘PAYE intermediary’; and 5
- “(b) the reference to ‘an agent of a taxpayer’ in subsection (3)(a) were a reference to a ‘PAYE intermediary’; and
- “(c) the reference to a ‘taxpayer’s’ in subsection (3)(b) were a reference to a ‘PAYE intermediary’s’. 10
- “(2) Sections 183C, 183D to 183F, 183H, 183I, 184A and 184B apply to a PAYE intermediary in their capacity as a PAYE intermediary as if all references to a ‘taxpayer’ were read as references to a ‘PAYE intermediary’. 15
- “(3) Section 183G applies to a PAYE intermediary in their capacity as a PAYE intermediary as if—
- “(a) all references to a ‘taxpayer’ were read as references to a ‘PAYE intermediary’; and
- “(b) paragraph (d) were not there.” 20
- (2) **Subsection (1)** applies on and after 1 April 2003.

Part 4 Amendments to other Acts

Amendments to Goods and Services Tax Act 1985

- 132 Goods and Services Tax Act 1985** 25
- Sections 133 to 142** amend the Goods and Services Tax Act 1985³.

³ 1985, No 141, RS Vol 27, p 245

- 133 Interpretation**
- (1) This section amends section 2.
- (2) After the definition of **consideration in money**, the following is inserted: 30
- “**content** means the signals, writing, images, sounds or information of any kind that are transmitted, emitted or received by a telecommunications service”.

- (3) In the definition of **taxable supply**, “, **11AB**” is inserted after “11A”.
- (4) After the definition of **Taxation Review Authority**, the following is inserted:
- “**telecommunications services** means the transmission, 5
emission or reception, and the transfer or assignment of the
right to use capacity for the transmission, emission or recep-
tion, of signals, writing, images, sounds or information of any
kind by wire, cable, radio, optical or other electromagnetic 10
system, or by a similar technical system, and includes access
to global information networks but does not include the con-
tent of the telecommunication”.
- (5) **Subsections (2) to (4)** apply on and after 1 July 2003.
- 134 Meaning of term supply**
- (1) In section 5(14), “, **11AB**” is inserted after “11A”. 15
- (2) **Subsection (1)** applies on and after 1 July 2003.
- 135 Imposition of goods and services tax on supply**
- (1) The proviso to section 8(2) is replaced by:
- “(3) Despite subsection (2), goods and services are treated as being 20
supplied in New Zealand if the supplier is not resident in New
Zealand and either—
“(a) the goods are in New Zealand at the time of the supply;
or
“(b) the services are physically performed in New Zealand 25
by a person who is in New Zealand at the time the
services are performed.
- “(4) Despite subsection (2), if goods and services to which **sub-
section (3)** apply are supplied to a registered person for the
purpose of carrying on the person’s taxable activity, the goods 30
and services are treated as being supplied outside New
Zealand unless the supplier and recipient agree that this sub-
section will not apply to the supply.
- “(5) **Subsections (3) and (4)** do not apply to supplies of telecommu-
nications services.
- “(6) Telecommunications services are treated as being supplied in 35
New Zealand if the supplier is not resident in New Zealand

- and a person, physically in New Zealand, initiates the supply from a telecommunications supplier, whether or not the person initiates the supply on behalf of another person.
- “(7) **Subsection (6)** does not apply to supplies made between telecommunications suppliers. 5
- “(8) For the purpose of **subsection (6)**—
- “(a) circumstances in which a person is treated as initiating a supply from a telecommunications supplier include situations in which—
- “(i) the person is in New Zealand and agrees to accept charges for a collect telecommunication, irrespective of where the telecommunication originates; or 10
- “(ii) the person is a party to a multi-party telecommunication which originates from their number: 15
- “(b) the Commissioner may prescribe circumstances in which a person is treated as initiating a supply from a telecommunications supplier.”
- (2) **Subsection (1)** applies on and after 1 July 2003.
- 136 New section 8A inserted 20**
- (1) After section 8, the following is inserted:
- “8A **Supplies of telecommunications services**
- “(1) If a telecommunications supplier cannot apply **section 8(6)** because it is impractical for the supplier to determine the physical location of a person due to the type of service or to the class of customer to which the person belongs, the supplier must treat a supply of telecommunications services as being supplied in New Zealand if the person’s address for receiving invoices from the supplier is in New Zealand. 25
- “(2) **Subsection (1)** does not apply to supplies made between telecommunications suppliers. 30
- “(3) If **subsection (1)** applies, the telecommunications supplier must satisfy **subsection (1)** for all supplies of telecommunications services made for the type of service or the class of customer.
- “(4) In this section, **address** means the physical residential or business address of a person to which invoices are sent, and does not include a post office box number.” 35
- (2) **Subsection (1)** applies on and after 1 July 2003.

- 137 Zero-rating of services**
- (1) After section 11A(1)(b), the following is inserted:
- “(ba) the services are the transport of passengers from a place in New Zealand to another place in New Zealand by sea as part of an international cruise if either the first place of departure, or the final place of destination, of the cruise is outside New Zealand; or”.
- (2) After section 11A(4), the following is added:
- “(5) This section does not apply to supplies of telecommunications services.”
- (3) **Subsection (1)** applies on and after the date this Act receives the Royal assent.
- (4) **Subsection (2)** applies on and after 1 July 2003.
- 138 New section 11AB inserted**
- (1) After section 11A, the following is inserted:
- “11AB Zero-rating of telecommunications services**
A supply of services that is chargeable with tax under section 8 must be charged at the rate of 0% if—
- “(a) the services are the supply of telecommunications services to an overseas telecommunications supplier by a telecommunications supplier resident in New Zealand for the transmission, emission or reception in New Zealand of a telecommunications service initiated outside New Zealand; or
- “(b) the services are the supply of telecommunications services to a person outside New Zealand, not being an overseas telecommunications supplier, for a telecommunications service initiated outside New Zealand.”
- (2) **Subsection (1)** applies on and after 1 July 2003.
- 139 Fringe benefits and entertainment expenses**
- (1) In section 21I(2)(c), “**11AB**” is inserted after “11A,”.
- (2) **Subsection (1)** applies on and after 1 July 2003.
- 140 Tax invoices**
- (1) In the proviso to section 24(4), “, **11AB**” is inserted after “11A”.

(2) **Subsection (1)** applies on and after 1 July 2003.

141 Persons making supplies in course of taxable activity to be registered

(1) At the end of section 51(1)(d), “person.” is replaced by “person; or” and the following is inserted: 5

“(e) making supplies of telecommunications services to a person who is not resident in New Zealand but who is physically present in New Zealand if those supplies would be treated as being made in New Zealand under either **section 8(5)** or **section 8A.**” 10

(2) **Subsection (1)** applies on and after 1 April 2003.

142 Agents and auctioneers

(1) In section 60(6), “, **11AB**” is inserted after “11A”.

(2) **Subsection (1)** applies on and after 1 July 2003.

Amendments to Income Tax Act 1976 15

143 Income Tax Act 1976

Section 144 amends the Income Tax Act 1976⁴.

⁴ 1976, No 65; RS Vol 29–1, p 1; RS Vol 29–2, p 999

144 New section 191WF inserted

(1) After section 191WE, the following is inserted: 20

“**191WF Deduction to amalgamating company for depreciable property transferred** 20

Despite section 108, in respect of a qualifying amalgamation, an amalgamating company is allowed a depreciation deduction for property transferred to the amalgamated company for the period beginning on the first day of the income year in which the amalgamation takes place and ending on the day before the date of the amalgamation.” 25

(2) **Subsection (1)** applies on and after 1 July 1994.

(3) Despite **subsection (2)**, **subsection (1)** does not apply if a taxpayer has not claimed a deduction for depreciation for the income year in which the amalgamation occurs in a return of income filed before 14 May 2002. 30

Amendments to Student Loan Scheme Act 1992

145 Student Loan Scheme Act 1992

Sections 146 to 154 amend the Student Loan Scheme Act 1992 (1992 No 141) (in those sections called “the principal Act”).

146 Interpretation

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- (1) Section 2 of the principal Act is amended by inserting, after the definition of **non-resident repayment obligation**, the following definition:

“**PAYE intermediary** means a PAYE intermediary as defined in section OB 1 of the Income Tax Act 1994”.

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- (2) **Subsection (1)** applies on and after 1 April 2003.

147 Borrower to notify employer of student loan repayment obligation

- (1) The heading to section 18 of the principal Act is amended by inserting, after the word “**employer**”, the words “**or PAYE intermediary**”.

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- (2) Section 18 of the principal Act is amended by inserting, after the words “notify that employer”, the words “or a PAYE intermediary”.

- (3) **Subsections (1)** and **(2)** apply on and after 1 April 2003.

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148 Employer to make repayment deductions

- (1) The heading to section 19 of the principal Act is amended by inserting, after the word “**Employer**”, the words “**or PAYE intermediary**”.

- (2) Section 19 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

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- “(1) If **section 18** applies, each time an employer pays an amount to a borrower by way of salary or wages for an income year, the employer or a PAYE intermediary must make a deduction from that amount.”

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- (3) **Subsections (1)** and **(2)** apply on and after 1 April 2003.

- 149 Information to show repayment deductions made**
- (1) Section 24(1) of the principal Act is amended by inserting, after the words “Every employer”, the words “or PAYE intermediary”.
- (2) **Subsection (1)** applies on and after 1 April 2003. 5
- 150 PAYE rules of Income Tax Act 1994 to apply to repayment deductions**
- (1) Section 25(1) of the principal Act is amended by inserting, after the words “every employer and employee”, the words “, or PAYE intermediary and employee,”. 10
- (2) Section 25(2) of the principal Act is amended by omitting the expression “NC 17,”.
- (3) **Subsection (1)** applies on and after 1 April 2003.
- (4) **Subsection (2)** applies to the 2002–03 and subsequent income years. 15
- 151 Payment of terminal repayment obligation**
- (1) Section 30 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) A terminal repayment obligation for an income year that is not previously due and payable is due and payable on the borrower’s **terminal tax date**, as defined in section OB 1 of the Income Tax Act 1994, for the income year.” 20
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years.
- 152 Power of Commissioner in respect of small amounts** 25
- (1) Section 51 of the principal Act is amended by inserting, after the words “an employer” in both cases where those words occur, the words “or a PAYE intermediary”.
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 153 Challenge to assessment of repayment deduction** 30
- (1) Section 67 of the principal Act is amended by inserting, after the words “Any employer”, the words “or a PAYE intermediary”.
- (2) **Subsection (1)** applies on and after 1 April 2003.

- 154 Offences in respect of repayment deductions**
- (1) Section 77(1)(d) and (e) of the principal Act is amended by inserting, after the words “an employer”, the words “or a PAYE intermediary”.
- (2) **Subsection (1)** applies on and after 1 April 2003. 5
- Amendments to Child Support Act 1991*
- 155 Child Support Act 1991**
Sections 156 to 159 amend the Child Support Act 1991 (1991 No 142) (in those sections called “the principal Act”).
- 156 Unremitted deductions made by employers** 10
- (1) The heading to section 147 of the principal Act is amended by adding the words “**or PAYE intermediaries**”.
- (2) **Subsection (1)** applies on and after 1 April 2003.
- 157 Protected net earnings rate**
- (1) Section 165(1) of the principal Act is amended by inserting, after the words “the employer of a liable person”, the words “, or a PAYE intermediary,”. 15
- (2) Section 165(2) of the principal Act is amended by inserting, after the words “an employer”, the words “or a PAYE intermediary”. 20
- (3) Section 165 of the principal Act is amended by adding the following subsection:
- “(3) In this section, **PAYE intermediary** has the same meaning as in section OB 1 of the Income Tax Act 1994.”
- (4) **Subsections (1) to (3)** apply on and after 1 April 2003. 25
- 158 Position where liable person has 2 or more employers**
- (1) Section 166(2) of the principal Act is amended by—
- (a) inserting, after the words “an employer of the liable person”, the words “, or a PAYE intermediary,”;
- (b) inserting, after the words “all employers”, the words “(including any PAYE intermediary)”. 30
- (2) Section 166 of the principal Act is amended by adding the following subsection:

- “(3) In this section, **PAYE intermediary** has the same meaning as in section OB 1 of the Income Tax Act 1994.”
- (3) **Subsections (1) and (2)** apply on and after 1 April 2003.
- 159 Offence to prejudice employees because of financial support liability** 5
- (1) Section 171(1)(g) of the principal Act is amended by inserting, after the words “the employer”, the words “or to the PAYE intermediary”.
- (2) Section 171 of the principal Act is amended by adding the following subsection: 10
- “(4) In this section, **PAYE intermediary** has the same meaning as in section OB 1 of the Income Tax Act 1994.”
- (3) **Subsections (1) and (2)** apply on and after 1 April 2003.
- Amendments to Injury Prevention, Rehabilitation, and Compensation Act 2001* 15
- 160 Injury Prevention, Rehabilitation, and Compensation Act 2001**
- Sections 161 to 164** amend the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49) (in those sections called “the principal Act”). 20
- 161 Liability to pay Residual Claims levy**
- (1) Section 193(5)(b) of the principal Act is amended by omitting the words “or section MC 2”.
- (2) **Subsection (1)** applies to the 2002–03 and subsequent income years. 25
- 162 Collection of levies by deduction from employee earnings**
- (1) Section 221(1)(a) of the principal Act is amended by omitting the words “must, at the time of making that payment,”, and substituting the words “, or a PAYE intermediary, must, at the time that payment is made,”. 30
- (2) Section 221 of the principal Act is amended by adding the following subsection:

- “(3) In this section, **PAYE intermediary** has the meaning set out in section OB 1 of the Income Tax Act 1994.”
- (3) **Subsections (1) and (2)** apply on and after 1 April 2003.
- 163 Offences in relation to deductions**
- (1) Section 316(1)(a) of the principal Act is amended by inserting, after the words “an employer”, the words “, or a PAYE intermediary”. 5
- (2) Section 316(1)(d) of the principal Act is amended by inserting, after the words “any employer”, the words “, any PAYE intermediary”. 10
- (3) Section 316 of the principal Act is amended by adding the following subsection:
- “(6) In this section, **PAYE intermediary** has the meaning set out in section OB 1 of the Income Tax Act 1994.”
- (4) **Subsections (1) to (3)** apply on and after 1 April 2003. 15
- 164 Schedule 4 amended**
- (1) Schedule 4 of the principal Act is amended by inserting, in clause 1(d), after the words “any employer”, the words “or a PAYE intermediary”.
- (2) Schedule 4 of the principal Act is amended by inserting, in clause 1, after the words “every employer and employee”, the words “, or PAYE intermediary and employee,”. 20
- (3) Schedule 4 of the principal Act is amended by—
- (a) inserting in clause 4, after the words “an employer”, the words “or a PAYE intermediary”: 25
- (b) inserting in clause 4, after the words “the employer” in all places where the words occur, the words “or the PAYE intermediary”.
- (4) Schedule 4 of the principal Act is amended by inserting in clause 5, after the words “that employee” in the first place where the words occur, the words “or a PAYE intermediary”. 30
- (5) Schedule 4 of the principal Act is amended by omitting from clause 7(b) the words “or section MC 2”.
- (6) Schedule 4 of the principal Act is amended by—
- (a) inserting in clause 8, after the words “Income Tax Act 1994”, the words “, or a PAYE intermediary,”: 35

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- (b) inserting in clause 8, after the words “the employer” in the second place where the words occur, the words “or the PAYE intermediary”.
- (7) Schedule 4 of the principal Act is amended by omitting from clause 9 the expression “NC 14, and NC 17”, and substituting the expression “and NC 14”. 5
- (8) Schedule 4 of the principal Act is amended by inserting in clause 17, after the words “an employer of the employee”, the words “or a PAYE intermediary”. 10
- (9) Schedule 4 of the principal Act is amended by inserting in clause 18, after the words “1 or more employers”, the words “, 1 or more PAYE intermediaries, or both an employer and a PAYE intermediary,”.
- (10) Schedule 4 of the principal Act is amended by inserting in clause 19(a), after the words “the person’s employer”, the words “or by a PAYE intermediary”. 15
- (11) Schedule 4 of the principal Act is amended by inserting in clause 22, after the words “**income tax**”, the words “**PAYE intermediary**,”. 20
- (12) **Subsections (1) to (4), (6), and (8) to (11)** apply on and after 1 April 2003.
- (13) **Subsections (5) and (7)** apply to the 2002–03 and subsequent income years.